

**THE UNITED REPUBLIC OF TANZANIA**

**(THE JUDICIARY)**

**HIGH COURT LABOUR DIVISION**

**AT MTWARA**

**APPLICATION FOR LABOUR REVISION NO. 9 OF 2015**

**(From the Original Award No. CMA/LIN/LD/17 of 2015 of the Commission  
for Mediation and Arbitration delivered by Mr. KACHENJE, J. J. Y.M.,  
Arbitrator on 30<sup>th</sup> January, 2016 at Lindi)**

**VENTURE RISK MANAGEMENT.....APPLICANT**

**VERSUS**

**AHMAD MWALIMU BAO.....RESPONDENT**

**R U L I N G**

9 & 30<sup>th</sup> June, 2020

**DYANSOBERA, J:**

This is an application for labour revision in which the applicant herein is seeking revision of the Award of the Commission for Mediation and Arbitration in Complaint No. CMA/LIN/LD/17/2015 between Ahmad Mwalimu Bao and Venture Risk Management dated 30<sup>th</sup> January, 2016. The application is accompanied with a notice of application and is supported by an affidavit sworn by Aisiana Moshi, the Principal Officer of

the applicant. According to paragraph 10 of the affidavit, two material facts have been identified for determination by this court, namely:-

- a. Whether the Commission for Mediation and Arbitration in Lindi had jurisdiction to entertain the Labour Dispute which arose in Mtwara
- b. Whether the Arbitrator was right to award subsistence allowance in favour of the respondent despite his recruitment and termination made in Mtwara and to the tune of Tshs. 100,0000/- per day
- c. Whether the Arbitrator was right to award leave allowance in favour of the respondent for the period which has not been worked for.

In resisting the application, the respondent has averred in his notice of opposition that the applicant has absolutely failed to clearly demonstrate that there are good grounds for this application to be entertained by this court and that there are neither points of law nor points of facts advanced by the applicant in support of the application.

The brief facts leading to the present application for revision are that the respondent was employed by the applicant as a driver. The first contract was one year fixed contract commencing on 1<sup>st</sup> August, 2014 and ending on 30<sup>th</sup> July, 2015. After the expiry of the first contract, there was a renewal but then for a two year contract term

which commenced on 1<sup>st</sup> August, 2015 and was to come to an end on 30<sup>th</sup> July, 2017. The respondent's first duty station was at Mtwara but he was transferred to Lindi where he worked until on 25<sup>th</sup> August, 2015 when his contract of employment was terminated on ground of absence from work without permission. The respondent believed that he was unfairly terminated and that the applicant had breached the contract of employment. He referred the dispute to the Commission for Mediation and Arbitration hereinafter referred to as the Commission. Before the Commission, the respondent craved for the following remedies, namely, one month's salary in lieu of notice, repatriation costs, two months salaries for his contractual leave equal to Tshs. 1,916,912/=, twelve months remuneration as compensation for unfair termination amounting to Tshs. 11, 501,472/=, twenty three months' salary as compensation for breach of the contract amounting to Tshs. 22, 044,488/=, specific damages at the rate of 12 months equal to Tshs. 11, 504.472/= on psychological torture after his contract was terminated, his pension for 24 months equal to 10% of his salary amounting to Tshs. 95,846/=, general damages and other reliefs. After the mediation proved fruitless, the matter was arbitrated by Mr. Kachenje, J.J.Y.M, the Arbitrator. There were a total of five issues to be determined by the Commission. One, whether

there was a valid reason for terminating the contract of employment. Two, whether the procedures before the termination were followed. Three, depending on the answers of issues one and two, whether the termination was fair. Four, whether the termination of the contract of employment amounted to breach of contract and five, the reliefs to which the parties were entitled.

During the arbitration proceedings, Asnath Jabir Kunja, the applicant's Assistant Human Resources Officer testified for the applicant whereas the respondent gave evidence in support of the complaint. In determining the first issue, the Arbitrator found that the reason for termination of the respondent's contract of employment was invalid (page 8 of the Award). He also found that there was no evidence to prove that the applicant observed any fair procedure before he could reach the decision of terminating the respondent's contract of employment (page 13 of the Award). As regards the third issue, the Arbitrator found that the termination of the contract of employment was both substantively and procedurally unfair.

With respect to the fourth issue, it was decreed that the applicant failed to fulfil the terms and conditions of the contract which was a fixed term contract of two years without valid reasons accompanied by non-observance of laid down procedures (page 13 of the Award).

As to the reliefs, the Commission was satisfied that the respondent was entitled to Tshs. 15,004,000/= being transport costs and fare and further subsistence allowance for all the period he had been out of employment till the date of the award subject to increment on the same rate of Tshs. 100, 000/= per day from the date of the Award till the date of actual payment or the date in which the respondent will be actually repatriated by the applicant from Lindi to Mtwara.

The respondent was further awarded damages for breach of contract to the tune of Tshs. 18, 673,056/= tax free being the salary for unexpired period of his contract. The respondent was also awarded Tshs. 1, 916,912/= being unpaid two years annual leave.

The respondent's claims on specific and general damages were disallowed for lack of evidential proof. In total, the respondent was awarded a sum of Tshs. 35,589,912/= without costs and the payments were ordered to be effected within 14 days from the date of the Award.

This decision aggrieved the applicant and on 10<sup>th</sup> May, 2019 she preferred an application for Labour Revision, the subject of this ruling.

On 5<sup>th</sup> September, 2019, the respondent and Mr. Sebeku Fadhili who was representing the applicant agreed this matter to be disposed by way of written submissions. Consequently, a time frame was set in

which the applicant was to file her written submission in chief by 19<sup>th</sup> September, 2019, the respondent had to file his reply by 3<sup>rd</sup> October, 2019 and the applicant had to file the rejoinder, if any, by 10<sup>th</sup> October, 2019. On 12<sup>th</sup> May, 2020 when the matter came for necessary orders, it seemed the respondent was yet to file his reply and time to file the same was extended to 26<sup>th</sup> May, 2020.

Parties duly complied with the court's order.

Arguing in support of the first point, Mr. Fadhili Sebeku pressed that according to the letter of termination (exhibit MA-1), paragraph 2 of the respondent's counter affidavit and the respondent's testimony under pp. 2, 3, 4 and 5 of the Award, the Commission at Lindi had no jurisdiction to determine the matter arising in Mtwara. Mr. Fadhili Sepeku sought support of his argument by citing Rule 22 (1) and (2) of Labour Institutions(Mediation and Arbitration), Rules 2007 and section 15 (1 (e) (ii) and (iii) of the Labour Institutions Act. Reliance was also made on the court decisions in the cases of **Christian Michael v. Ujenzi Secondary School**, Revision No. 178 of 2013 and **Dr. F Lwanyatika Masha v. the Attorney General**, Civil Case No. 136 of 2001.

With regard to the second point, it was contended on part of the applicant that the award of subsistence allowance to the tune of Tshs.

100, 000/= per day was irregular and illegal and contrary to section 43 (1) of the Employment and Labour Relations Act. The reason advanced in support of this argument was that the recruitment and termination of the respondent was in Mtwara.

With respect to the award of two years leave which is the third point, Mr. Fadhil Sebeku argued that the award was not only improper but also unjustified and went contrary to section 29 (1) of the Employment and Labour Relations Act and relied on the case of **Tanzania Harbours Authority v. Mohamed R. Mohamed** (2002) TLR 76 to buttress his stance.

On whether or not the Commission at Lindi lacked jurisdiction to entertain the labour dispute, the respondent told this court that those are fabricated facts intended to mislead the court. He explained that the place of work in the first employment was in Mtwara but after the renewal of the contract, he was shifted to Lindi where he worked until the dispute arose. According to him, since the dispute arose while he was working in Lindi, he, therefore, legally took the matter to the Commission at Lindi where the cause of action arose and the said Commission had jurisdiction. The respondent further explained that the termination was done out of the place of recruitment and that

since he worked for more than a year, he is entitled to the awarded two years leave.

After considering the parties' rival submissions and the facts accepted by the Commission, I am satisfied that the termination of the respondent's contract of employment was invalid and procedurally unfair. In that case, only one point that arise for determination by this court is whether there are sufficient grounds to fault the Arbitrator's Award.

As far as the issue of jurisdiction of the Commission at Lindi is concerned, there is no dispute that the Commission for Mediation and Arbitration offices are located in Lindi which is its territorial jurisdiction. Equally not disputed is the fact that the applicant's working station on the first contract of employment was in Mtwara but after the renewal of the contract, he was shifted to Lindi where he worked until the dispute arose. According to the respondent, since the dispute arose while the he was working in Lindi he took the matter to the Commission at Lindi where the cause of action arose and that the Commission was seized with jurisdiction to determine the matter. I agree. Apart from the respondent's version on this jurisdictional issue, the applicant through her witness Asnath Jabir Kunja (DW 1), the Acting Human Resources Officer testified that the

respondent was their employee who was employed as a driver on August, 2014 and was stationed at Mtwara. **The respondent was then transferred to Lindi where he worked up to August, 2015 when his contract of employment was terminated by the applicant.** This version is also reflected at p. 2 of the Award. Indeed the fact that the cause of action arose in Lindi was not disputed as evidenced under page 7 of the Award.

The law is settled on where the dispute should be mediated and arbitrated by the Commission. Rule 22 of the Labour Institutions (Mediation and Arbitration) Rules, GN 64/2007 which provides that:-

*"A dispute shall be mediated or arbitrated by the Commission at its office having responsibility for the area in which the cause of action arose unless the Commission directs otherwise".*

Officially translated as: *"Mgogoro utasuluhishwa au kuamuliwa na Tume katika ofisi yake inayowajibika na eneo husika ambapo sababu ya kuchukua hatua ilitokea, **isipokuwa kama Tume itaelekeza vinginevyo**"*

Since the cause of action (sababu ya kuchukua hatua) arose at Lindi where the respondent was working and Lindi being the territorial jurisdiction of the Commission which mediated and arbitrated the dispute in question, the argument that the Lindi Commission had no jurisdiction

is not only misleading but a pure misconception. I agree that the Lindi Commission had jurisdiction to entertain and adjudicate on the labour dispute in question. The first material/ground fact falls away.

The 2<sup>nd</sup> and 3<sup>rd</sup> *material facts* the applicant seeks to be determined are on remedies.

The remedies for unfair termination are set out under section 40 of the Employment and Labour Relations Act, No. 6 of 2004 and they are optional to the employee. First, is the reinstatement without loss of remuneration for a period of unlawful termination. Two, re-engagement and three, compensation of at least twelve months salary. The employer may opt to pay 12 months' salary in lieu of reinstatement or re-engagement.

Aside the above remedies, there are other employment benefits to which the employee is entitled on termination. These include remuneration for work done before termination, any leave pay due to the employee, severance allowance, one months' salary in lieu of notice, certificate of service, transport allowance and subsistence allowance while waiting for transport.

The record shows that the applicant paid the respondent one month's salary in lieu of notice. The other entitlements awarded are those I have endeavoured to show hereinabove. I need not repeat them.

Since the recruitment was done at Mtwara but the cause of action arose in Lindi where the respondent's contract of employment was terminated by the applicant, the award of subsistence allowance to the respondent was legally justified. The complaint in the 2<sup>nd</sup> *material fact* is baseless.

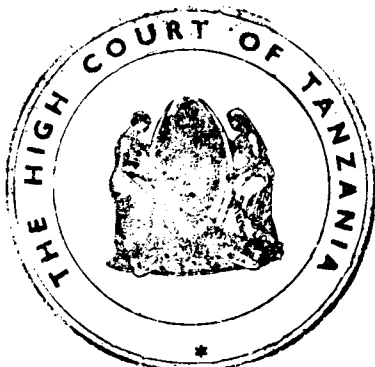
As to the applicant's complaint in the 3<sup>rd</sup> material fact, the Arbitrator at p. 18 of the Award observed:


*"Another claim as claimed by the Complainant is his three years annual leave. The law provides that an employee is entitled to take a one month (28 days) annual leave in each leave cycle. Since the respondent terminated the Complainant contract of employment unfairly, he is bound to pay the complainant his annual leave<sup>4</sup> for the two years period equal to two months remuneration. The Complainant prayed to be paid three years but the case at hand, the contract was for two and not three. Such being the case, the Complainant is entitled to be paid the sum of Tshs. 958, 456 x 2= Tshs. 1,916, 912/= (say Tanzania Shillings One Million Nine Hundred Sixteen Thousand Nine Hundred Twelve only)".*

With respect. I agree. That is what the law actually provides. This reasoned finding cannot be faulted. The complaint in this aspect also collapses.

This application having preferred under section 91 (1) and (2) (a), (b) and (c) of the Employment and Labour Relations Act and Rules 24 and 28 of the Labour Court Rules. There is no dispute that under paragraphs (a), (b) and (c) of sub-rule (2) of rule 91 of the Act, the basis on which the Award may be faulted are misconduct on part of the Arbitrator, the Award being improperly procured or the Award being illogical or irrational.

As the record shows considered together with the application, the applicant has miserably failed to establish the basis on which the Arbitrators Award can be faulted by this court; in other words, the application for labour revision has been filed on insufficient grounds of complaint. It follows from what I have said that this application fails and must be dismissed, and I order accordingly. The Arbitrator's Award is thereby confirmed.



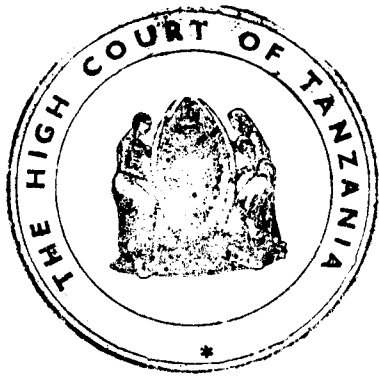
  
W.P. Dyansobera

JUDGE

30.6.2020

This ruling is delivered under my hand and the seal of this Court on this 30<sup>th</sup> day of June, 2020 in the presence of the respondent and Mr.

Issa Chiputula, learned counsel holding brief for Mr. Sebeku, learned advocate for the applicant.



A handwritten signature in black ink, appearing to read "W.P. Dyansobera", written in a cursive style.

W.P. Dyansobera

JUDGE