

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**[LABOUR DIVISION]  
AT ARUSHA**

**REVISION APPLICATION NO. 95 OF 2019**

*(C/F Commission for Mediation and Arbitration for Arusha, Labour Dispute No.  
CMA/ARS/ARB/154/2019)*

**GIDION NDEONASIA MOSHA ..... APPLICANT**

**VERSUS**

**OLOTU TRADING (CO) LTD ..... RESPONDENT**

**JUDGMENT**

*22<sup>nd</sup> September & 10<sup>th</sup> November, 2020*

**Masara, J.**

In this application for revision, **Gidion Ndeonasia Mosha**, the Applicant herein, being dissatisfied by the Award issued by the Commission for Mediation and Arbitration (CMA) dated 7<sup>th</sup> day of October, 2019, has filed this application moving the Court to revise and set aside the said Award. It appears from the record that the Applicant was employed by the Respondent in September, 2008. The Applicant claims to have been verbally terminated on 20<sup>th</sup> June, 2019 without being accorded reasons for the termination and that no letter of termination was given to him after he made a follow up. He thus filed his claim in the Commission for Mediation and Arbitration claiming for Tshs. 5,258,076.92 being compensation of 12 month's salary for unfair termination, One month's salary in lieu of Notice, severance pay and certificate of service. The Commission upon hearing the parties it concluded that the Applicant's employment was not terminated as alleged and that he should report back to work. The Applicant was not pleased with that Award,

he has thus preferred this Revision seeking this Court to set aside the Award by the Commission and make appropriate orders. The Applicant preferred the revision on four grounds or issues; namely,

- a) whether the Arbitrator imported evidence suo motto of payment of salaries and made a decision thereon without affording the party the right of being heard on those facts;
- b) whether the Arbitrator had properly evaluated evidence adduced by the Applicant;
- c) whether the Respondent verbally terminated the Applicant; and
- d) whether the principle of natural justice was observed by the employer in the whole procedure of terminating the Applicant.

Before this Court, the Applicant appeared in person, unrepresented while the Respondent was represented by Mr. Herode Bilyamtwe, a principal officer of the Respondent. Hearing proceeded by way of written submissions.

Submitting in support of the application, the Applicant contended that he had been verbally terminated by the Respondent and that the Arbitrator was wrong to hold that he had not been terminated based on the assumption that he was continuing to receive salaries. He further argued that the Arbitrator was supposed to order a reinstatement from the date of termination without loss of remuneration in line with Section 40(1)(a) of the Employment and Labour Relations Act, 2004 (R.E 2019). Regarding the issue of salaries, the Applicant stated that there was no evidence that he was receiving salaries as alleged by the Respondent's representative as no

document was tendered to prove the same. He concluded that the CMA decision had an effect of denying him his legal rights in terms of basic salaries.

On grounds (c) and (d), the Applicant submitted that he was unfairly terminated contrary to Section 37(1) of the Employment and Labour Relations Act as he was not afforded the right to be heard. He cited several decisions to back up his assertion. The Applicant urged the Court to revise the proceedings and the ensuing Award of the CMA and give appropriate orders.

Contesting the application, Mr. Bilyamtwe did not respond to the submissions made by the Applicant on merits. He contended that the Application before this Court was filed beyond the prescribed 42 days as the decision of the CMA was delivered on 3<sup>rd</sup> July 2019 but the Application was filed on 15<sup>th</sup> November, 2019, which was out of time. He challenged the Applicant's submission which mentioned 7<sup>th</sup> October, 2019 as the date when the impugned Award was delivered. He referred this Court to section 91(1)(a) of the Employment and Labour Relations Act to the effect that an application was supposed to be filed within six weeks from the date the Award was made. In his view, as there was no Application to challenge the Award dated 3<sup>rd</sup> July, 2019, the present application should be dismissed.

I have given a deserving weight to the Applicant's as well as the Respondent's affidavits and the rival submissions of the parties in this

application. The issues for determination are whether this Application should be dismissed for being time barred and whether the Applicant's application should be sustained on the grounds canvassed in the affidavit supporting the Application.

The first issue need not detain me as it is clear that Mr. Bilyamtwe's submission was made without adequate information. He must have read the Award that was later rectified by the Arbitrator, one Mr. Mourice Egbert Sekabila. In the Ruling dated 7<sup>th</sup> October, 2019, the Arbitrator corrected the incorrect statement appearing at page 5 of the original Award which read *"This award is delivered this 3<sup>d</sup> day of July, 2019 at CMA Arusha"* and substituted the same with the statement: ***"This award is delivered this 4<sup>th</sup> day of October, 2019 at CMA Arusha"***. That being the position, the Respondent's submission was made out of context. The Application was filed within the prescribed period.

Turning to the second issue, it is the finding of this Court that the same should be answered in the negative. The Applicant challenges the CMA Award which, in my view, was well premised and was in his favour. Going with the record supplied to this Court, the issue that the Applicant's employment was unfairly terminated was properly addressed in the award and a conclusion was made that the Applicant's employment was not terminated at all. The CMA went ahead, rightly in my view, to order that the Applicant reports back on duty. The CMA relied on the Applicant's own evidence to reach into the decision it made. The proceedings show that when

the Applicant was asked a question whether he was still getting paid salary and NSSF, he replied in the affirmative. Then he was asked:

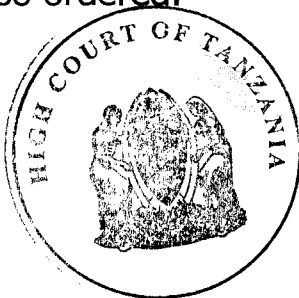
*"Qn: Can a terminated employee be paid salary and salary deductions and statutory?"*

*An: I have been terminated."*

From those responses, the Arbitrator cannot be faulted in concluding that there was no termination of the Applicant before the Applicant preferred the matter before the CMA. In the final submissions filed at the CMA, the Respondent reiterated that they were surprised to be summoned at the CMA as the Applicant was still their employee. If it is true as contended by the Applicant that he was not receiving salary, he ought to prefer a claim for unpaid salaries.

Following what is explained above, this revision application has no merits. It is accordingly dismissed. This being a labour dispute, each party to bear their own costs.

It is so ordered.



  
Y. B. Masara

**JUDGE**

10<sup>th</sup> November, 2020