

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY]

AT ARUSHA

LABOUR REVISION NO. 71 OF 2018

(C/F CMA/ARS/ARB/263/2018)

ERPNESS EZEKIEL.....APPLICANT

Versus

SBC LIMITED TANZANIA.....RESPONDENT

JUDGMENT

27/08/2020 & 08/10/2020

MZUNA, J.:

Erpness Ezekiel (**the applicant**) felt aggrieved after the award of the Commission for Mediation and Arbitration of Arusha (**the Commission**) which dismissed his claim for unfair termination for the reasons that there was absence of employment relationship with SBC Limited Tanzania (**the respondent**). He prays for this court to grant him 12 months' remuneration as compensation for unfair termination, severance, compensation for the injury he suffered as well as salaries due.

The application is supported by the applicant's affidavit. It is opposed by a counter affidavit of Edwin Arbogast, the Principal Officer of the

respondent. By order of the court, hearing proceeded by way of written submissions.

The applicant's story leading to this dispute is that he was employed by the respondent since 2000 as casual labourer (loader) at the daily wage of Tshs 4,000/-. That he dealt with out of station sales "*mauzo ya porini*". Sometimes in 2014 he suffered an accident whereby he was admitted. He was unfairly terminated on 18/12/2014. He could not continue working. The respondent paid him Tshs 600,000/- during his sickness. He insisted that he should be paid his terminal benefits.

For the respondent it was established in evidence that the applicant was not their employee as he had no employment contract with them.

Now this court is to determine on three issues:-

- 1. Whether there was employer- employee relationship between the applicant and respondent?*
- 2. Whether the applicant was unfairly terminated?*
- 3. What reliefs to which the parties are entitled to?*

Let me start with the first issue. The question to ask is, was there employment relationship between the parties herein? The applicant admitted that he was never employed on any contractual terms. He

averred that he was paid 4,000/= per day as a loader/porter and had no any documentary proof of employment with the respondent.

The respondent insisted there was no proof of employment relationship between the parties. The evidence of Johnson Kinamila (DW1), the respondent's Human Resource Manager, shows that the applicant was never employed by the respondent company. He is not even in the staff disposition list tendered at the Commission (*exhibit E2*). DW1 said further that the applicant was working for a company known as Mbulu Trading which dealt with sales. There was a time the applicant was involved in truck accident in which the respondent cared for him and other casualties just out of compassion and humanitarian appeal. He raised as well issue of suing a wrong party as the alleged SBC Limited Tanzania appearing in the original complaint form is not in existence, theirs is called SBC Tanzania Limited.

Now on the strength of the above evidence, can it be said that there was such employment relationship between the two? As a matter of law, the burden of proof on the allegation that termination was unfairly done lies with the employer, the respondent herein. The respondent relied on the provision of section 4 of the Employment and Labour Relations Act No.

6 of 2004 (herein after ELRA) and Section 61 of the Labour Institutions Act, No. 7 of 2004 (Act No. 7 of 2004) to bolster her argument that no such employment relationship which existed.

The term employee under section 4 of the Employment and Labour Relations Act, Act No 6/2004 has been defined to mean an individual who-

- (a) Has entered into a contract of employment; or*
- (b) Has entered into any other contract under which-*
 - (i) The individual undertakes to work personally for the other party to the contract; and*
- (c) ...(N/A)*
- (d) ...(N/A).*

The import of this provision presupposes existence of contract of employment. This may include for a specific task as well stated under section 61 of the Act No. 7 of 2004. This provision was interpreted by Rweyemamu, J (as she then was) in the case of **Director Usafirishaji Africa v. Hamisi Mwakabala & 25 Others**, Labour Revision No. 291 of 2009 High Court Dar es Salaam (unreported) and held that:-

"Under the law a person who renders services to any other person including for a specific task is presumed to be an

employee until the contrary is proved if one or more of the scenarios itemized under section 61 of the LIA exists.”

The appellant says performed specific task of a loader. The respondent says such task was not under the supervision of the respondent, instead he worked for Mbulu Trading who had business partnership with the respondent. In other words, he never depended on the respondent economically. Since the applicant had no contract with the respondent as well stated by DW1 merely performing specific task which is recognized under section 14 (1) (c) of Act No 6 of 2004 cannot entitle him such claimed remedies. The governing criteria is employment relationship with the respondent which is lacking in our case. He did not even produce evidence to show the mode of payment of his salary. I take note as well, based on *exhibit E3* (Company's certificate of incorporation) that even the year 2000 claimed by the applicant to have been engaged by the respondent, by then the company was not yet formed.

The applicant further relied on the alleged Tshs 600,000/- given to him after becoming sick. The respondent has said and I think rightly so, that it was out of good will so as to settle for the medical assistance after the applicant referred the matter to the Labour Officer. This is not a

handshake or recognition that he was her employee or that he dependent on her economically.

I find that there was no employer and employee relationship because the applicant was never under direct control of the respondent but Mbulu Trading Company. The first issue is answered in the negative.

Having answered the first issue in the negative, the remaining two issues on unfairness of termination and reliefs, are answered in the negative too. That said and done, I see no reason to interfere with the finding and decision of the CMA as the award was not improperly procured.

Application for revision stands dismissed with no order for costs.



10/8/2020

X 

Signed by: M G MZUNA JUDGE