

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY]

AT ARUSHA

LABOUR REVISION NO. 69 OF 2018

(C/F CMA/ARS/ARB/245/2017)

EMANUEL DAUDI MMARI.....APPLICANT

Versus

ZAITUNI ABDULY ISMAILY.....RESPONDENT

JUDGMENT

27/08/2020 & 22/10/2020

MZUNA, J.:

Emanuel Daudi Mmari, the applicant herein, instituted a claim for unfair termination at the Commission for Mediation and Arbitration (CMA) against **Zaituni Abduly Ismaily**, the respondent herein. The claim by the applicant who was his driver is that he was terminated from employment without valid reasons and without a fair procedure.

On her part, the respondent who deals in public transportation business and owned two commuter buses, said that was informed by Shekiledi, (who was the then supervisor of the said buses) that he hired a new driver. That was on 28th July, 2017, at the time when the respondent was away in the USA. He informed her that on 20th September, 2017 the applicant absconded the said bus after an accident. His driving licence was

withheld. He decided to abscond from work. The applicant was asked to resume work on 28th September, 2017 after his apology but never complied.

Based on the evidence, the CMA found that the applicant worked for two months and therefore was still under probation. The claim was accordingly dismissed.

Being aggrieved, the applicant instituted this revision application. It is supported by the affidavit of the applicant while opposed with a counter affidavit of Mr. Frank Maganga, Personal Representative of the respondent. During the hearing, both the applicant and the respondent appeared in person and unrepresented.

The main issue(s) are:- (a) Whether there was a breach of employment contract? (b) Whether the claim for unfair termination could validly be instituted against the respondent? (c) What are the entitled reliefs?

The first question is on breach of employment contract which will determine whether there were valid reasons. In his oral submissions, the applicant said that he had a one year fixed term contract which he signed with Mr. Shekilend whom he understood as the owner of the motor vehicle but learnt latter that the owner was the respondent. That the CMA was

wrong to find he voluntarily terminated his employment while he was not served with notice of termination. That his evidence was ignored. That the agreement was to drive one motor vehicle but was latter given another agreement to sign as a driver for another motor vehicle, something which he complained to the Labour Officer. He insisted should be paid his terminal benefits of salaries for 12 months (i.e Tshs 3,100,000/-).

In reply, the respondent submitted that in the first place does not know the applicant. That, the applicant left his job for Dar es Salaam and when he came back was offered another vehicle to drive but refused allegedly that it had no fuel. The respondent says was ready and willing to pay him two months salaries (total Tshs 400,000/-) as suggested by the Labour Officer but he refused.

On the question of existence of valid reasons for termination, the allegation by the applicant is that, his contract of employment was for one year. The respondent say the applicant was not terminated but absconded himself from work. The CMA found that he absconded for five days and his employment contract was not in writing and was not tendered (see page 8 of the award). The evidence of PW1 Zaituni Ismail, the respondent said that after absconding from work he came back and apologized. That he was given

another motor vehicle but never attended at work instead blocked the employer's car on the road and created chaos. She insisted the applicant had never at any point in time been terminated from employment.

Reading the applicant's evidence, he said was employed from 28th July, 2017 and was terminated two months thereafter. He admitted absconded and went to Dar es Salaam after he faced an accident at Mbauda corner. From the above evidence, the first issue of whether there were valid reasons for termination is answered in the negative that there was no termination as alleged. He absconded himself. The first issue is resolved against him.

Now, could the applicant bring a claim for unfair termination? Reading the CMA Form No.1 it clearly shows that the applicant started work from 28th July, 2017 and was terminated on 28th September, 2017. That being the case, and in the absence of a signed contract of employment which was not tendered, this court finds that he worked below six months. The CMA was right to find that the applicant could not validly claim for unfair termination based on the provisions of section 35 of the Employment and Labour Relations Act, No. 6 of 2004 because he was under probation. That section provides that provisions of unfair termination do not apply to employee with

less than six months' employment with the same employer. That said, the applicant could not bring a claim for unfair termination.

Lastly on reliefs. The question is, is he entitled for compensation? There is an argument that there were two months' unpaid salaries. During cross examination at the CMA, the applicant admitted claimed for two months salaries being August and September, 2017. In his evidence in chief he said that he deducted his July, 2017 salary from the car collections which he received. That being the case he is entitled for one month salary only at Tshs 200,000/- not as claimed by the respondent that it was monthly salary of Tshs. 140,000/-.

In conclusion, the applicant having absconded himself from work and having worked for two months only, he cannot claim for compensation for 12 months salaries. I see no reason to interfere with the finding and the award of the CMA, save for one month salary due. The application for revision stands dismissed with no order for costs.



Judgment for the respondent.

A handwritten signature in black ink, appearing to read 'M. G. Mzuna'.

**M. G. MZUNA,
JUDGE.**

22. 10. 2020