

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

LABOUR REVISION NO. 2 OF 2019

(Originating from the Original Award of CMA in

CMA/TAB/DISP/42/2014)

SAID MASOUD SIZYA APPLICANT

VERSUS

KITUMBO SECURITY GUARD LTD RESPONDENT

RULING

Date: 9/6 & 16/07/2021

BAHATI, J.:

The applicant **Said Masoud Sizya** was formerly an employee of the respondent Kitumbo Security Guard Ltd. The applicant filed a Labour Dispute at the Commission for Arbitration at Tabora vide CMA/TAB/DSP/42/2014 for payment of terminal benefits totaling TZS 2,807,794/= after he was unfairly terminated from employment by the respondent; his claim is made up of;

1. Overtime allowance for 6 years and 5 months = TZS. 2,495,808/=
2. Severance payment TZS. 181,906/=
3. Annual leave payment TZS. 130,000/=

The dispute was first scheduled before Mediator on 18/08/2014 and according to an existing record; the dispute was re

solved on the same day by parties agreeing to resolve the dispute under mediation.

It is also on record that, the applicant approached this Court several times trying to execute the settlement reached but failed for various reasons. Still determined to obtain his right he has preferred this application couched thus: -

- (a) *That, this Honourable Court be pleased to revise that the decision of the dispute No. CMA/TAB/DISP/42/2014 was meted out without the Application being heard.*
- (b) *That, the honourable Court be pleased to revise and order that mediation under section 86 of the Employment and Labour Relations Act was not done.*
- (c) *That, the Honourable Court be pleased to revise and be satisfied in the failure of Mediation, Arbitration follows under Section 88 of the Employment and Labour Relation Act, 6/2004 but this was not done.*
- (d) *That, this Honourable Court be pleased to revise and satisfy itself that the Certificate of settlement was written but its content was not disclosed to the applicant.*
- (e) *That, it is in the interest of justice that this Honourable Court be pleased to revise the CMA Mediation proceedings to the merit of the applicant's complaints.*

Also, the application is supported by an affidavit deposed on by the applicant Said Masoud Sizya, the applicants' averments run as follows;

That, he was employed by Kitumbo Security guards Company Ltd Tabora as a Security Guard since August 2007 at a monthly salary of TZS 80,000/= which later increased to TZS 130,000/= per month in the year 2013 and the modality of employment was periodical in each year.

That, after working for six years he was unlawfully terminated on 23rd December, 2013 without being given his benefits for reasons known to the employer himself. He subsequently filed a suit at Commission for mediation and Arbitration seeking his financial benefits at the tune of TZS 4,089,357.000/=

That, the CMA instead of responding to his prayers on financial benefits at the tune of TZS 4,089,357/= they settled the matter by awarding him one an annual leave for the year 2012 and reinstatement to employment. He agreed with a condition that he will return after he gets paid 2012 leave but he was not paid. He applied to the High Court for the execution of the award but the same was struck out for the reason that the decision had no award to execute.

Still determined to execute the award, he again approached the CMA wanting the CMA to issue an award but instead, the CMA struck out the application.

The applicant based his submissions on the above averments and prayed this court to order the dispute be tried de novo, order the CMA to write an award for the applicant costs of the application, and any other relief this court may think proper to grant.

During the hearing, the parties agreed to argue the application by way of written submission. The applicant was represented by Mr. Samwel Ndanga learned counsell while the respondent was represented by Mr. Kilingo Hassan, learned counsell.

Upon submissions the whole record, a point for consideration is:-

- i. Whether the applicant was afforded the right to be heard and*
- ii. Whether the content of the Certificate of settlement was disclosed to the applicant.*

Before analysing the issues above, it is clear to the applicant that, the record shows that his claim at the CMA was a total of TZS: 2,807,794/= as elaborated on the first page of this ruling.

On the first day of the hearing both parties agreed to resolve the dispute under mediation as follows, I quote: -

“Likizo za mwaka 2012 alipwe kama hajalipwa alipwe (mlalamikaji na mlalamikiwa wamekubaliana) leo 18/8/2014. Mlalamikaji amekubali kurudi kazini tarehe 1/9/2014, likizo ya 2013 (ofisi itamlipa akitimiza muda wake).”

The applicant at paragraph 6 of his affidavit averred that he agreed with the settlement with a condition that he will reinstate only after he gets paid one-month salary leave of 2012. Unfortunately, the condition applicant is telling this court is not reflected in the Certificate of settlement. One will easily be swayed by Mr. Kilingo's submission that, the applicant was given a fair hearing which is why he agreed to a settlement and signed.

The applicant is trying to introduce new facts which were not matters of discussion at the CMA, for instance, in his submission, he stated that his claim which he wanted this Court to execute was TZS 4,089,357/= but nowhere in the CMA file that amount is reflected to connote that he claimed that amount or the CMA awarded him to that tune.

As to the second issue on whether the content of the Certificate of settlement was read to the applicant, also paragraph 6 of his affidavit states that the applicant knew the content of the certificate but he willingly opted not to reinstate until he gets paid on one part of the agreement but the option the applicant took was not in the terms of the agreement.

Having said that, I uphold the decision of the Commission for Mediation and Arbitration, and consequently, the application is found unmeritorious hence dismissed.

Order accordingly.



A.A BAHATI

JUDGE

16/07/2017

Ruling delivered under my hand and seal of the court in the chamber, this 16th day July, 2021 in the presence of applicant in the absent of the respondent.



A. A. BAHATI

JUDGE

16/07/2021

Right of appeal fully explained.



A. A. BAHATI

JUDGE

16/07/2021

