

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT ARUSHA
LABOUR REVISION NO. 21 OF 2020**

(Original CMA/ARS/ARS/12/2019)

**FRANK NYAMAZURI..... 1ST APPLICANT
JAPHET MWENDO 2ND APPLICANT
ISABELA JOAN KULELE3RD APPLICANT
SUMA MWAKANYAMALE4TH APPLICANT
VERSUS**

HEAVEN PRE & PRIMARY SCHOOLRESPONDENT

JUDGMENT

12/04/2021 & 26/7/2021

GWAE, J

The applicants named herein above represented by one Frank Maganga, their representative of their choice have knocked the doors of this court seeking orders of the court varying the arbitral award of the Commission for Mediation and Arbitration for Arusha at Arusha vide CMA/ARS/ARB/12/2019 where the applicants' dispute was determined on the 7th February 2020 and the verdict was entered in favour of the respondent on the ground that, the applicants voluntarily resigned from their employment before the expiry of their employment contracts.

It is imperative if facts of the dispute between the parties are briefly summarized hereinafter; That, applicants were employed by the respondent for two years period

commencing in 2017 at diversity dates save to the 3rd applicant who was employed in the year 2016. The records further reveal that, the applicants on 5th September 2018 sought an apology for their negligence which led to poor performance of the respondent's school. The applicants subsequently wrote resignation letters dated 27th September 2018 giving the respondent one-month statutory notice. The applicants' resignation letters were in handwritten forms except that of the 1st applicant. The respondent made a reply to the applicants' resignation letters including others not in this dispute ((Bibwana and Joel Chacha) stating inter alia that, the school accepted their resignation letters due to the applicants' poor work performance.

Aggrieved by the arbitral award, the applicants are now challenging the same on the following grounds;

1. That, the arbitrator erred in law and fact by writing incorrect testimonies and answers during cross examination
2. That, That, the arbitrator erred in law and fact the arbitrator erred in law and fact by challenging the testimonies of PW2, PW3 PW4 and PW5 who admitted to perform well their examination taught by the applicant
3. That, the arbitrator erred in law and fact by holding that the applicants are not deserved with their Gratuity payments while the contracts speak clearly in article 5

The respondent strongly opposed the applicant' application by stating through counter affidavit sworn by her advocate David Kahwa by stating that, the gratuity rights were forfeited by the acts of applicants' resigning from their employment and that the testimonies of the witnesses during hearing were properly recorded.

This application was argued by way of written submission but the parties' written submissions were nothing but a repetition to their affidavits. Hence, I shall not reproduce the same.

In determining the 1st and 2nd grounds for the sought revision, I am not persuaded to hold either that, the testimonies of the witnesses were improperly recorded as no other record that I can compare to enable me agree with the applicants' assertions or that, the testimonies of pupils who appeared before the Commission was not considered on the ground that the same was immaterial since it was not the issue before the Commission. Considering the fact that the applicants had voluntarily resigned from their employment prior to the respondent's action especially termination, I do not see any reason to keep on venturing on these two grounds for the sought revision by the applicants.

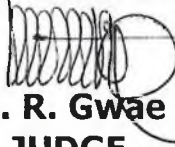
Now, therefore, I shall revert to the 3rd ground, if the applicants were entitled to gratuity, Clause 5 of the parties' contracts of employments, reads I quote it as herein under;

5. You are entitled to a termination gratuity at the rate of 10 % of your basic salary per month for each month worked payable at the **end of the contract period with HPPS**, or if terminated before the contract ends, within one month of termination. This gratuity is paid in lieu of not in additional to severance".

My reading of the clause 5 of the contract as reproduced above entails that there is a lacuna which is to be determined in favor of the applicants since it is expressly stated the applicants /employees would be entitled to gratuity if the contracts are terminated before its expiry.

Consequently, the applicants' application is dismissed save to their entitlement to termination gratuity as per their employment contracts. No order as to costs is made




M. R. Gwae
JUDGE
26/07/2021