

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LABOUR REVISION NO. 26 OF 2021

(Arising from Labour Dispute No. CMA/MZ/ILEM/111/2020/54/2020 at the Commission for Mediation and Arbitration (CMA) at Mwanza)

HALIMA N. MWANGAAPPLICANT

versus

TANZ TRAVEL AND CAR HIRE.....RESPONDENT

RULING

27th July & 11th August, 2021

RUMANYIKA, J.:

Following the termination of Halima N. Mwanga (the applicant) application for revision is, with respect to award of the Commission for Mediation and Arbitration for Mwanza at Mwanza dated 21/04/2021. It is supported by affidavit of Halima N. Mwanga whose contents Mr. Salehe Nassoro learned counsel for the applicant adopted during audio teleconference hearing on 27/07/2021. Mr. Kinango learned counsel appeared for Tanz Travel & Car Hire (the respondent). I heard them through mobile numbers 0757958667 and 0752845092 respectively.

Mr. Salehe Nassoro learned counsel submitted; **(1)** that the Arbitrator improperly evaluated the evidence. With effect from 21/08/2019

the respondent having had recruited the applicant for salary of shs. 600,000/= monthly until January, 2020 when they would have paid her 800,000/= per month but the respondent dishonored the promise leave alone non issuance to her of a written contract. The applicant having had asked for leave of absence orally and she did not abscond that also the respondent did not observe under laid procedure for termination. That is all.

Having had adopted contents of the affidavit, Mr. Kinango learned counsel submitted **(1)** that the evidence was properly analyzed and evaluated because the applicant did not, on balance of probabilities prove that she was actually recruited in 2019 much as a copy of the attendance register (exhibit D1) demonstrated that the applicant began signing only with effect from January, 2025 and payment of wages began in February, 2020 (Exhibit D2) **(2)** that there was no issue of unfair termination and benefits because still the applicant had only worked for less than six (6) months of the probationary period (S. 35(e) of the Employment and Labor Relations Act and the case of **Mwaitenda Ahobokile Michael v. Inter hick Co. Ltd**, Labor Revision No. 30 of 2010). That it was very unfortunate that the dispute was admitted and entertained in the first

place **(3)** that the applicant had absconded for 2-3 days much as she confessed before the committee that upon being denied of leave of absence she just quitted.

In his rejoinder, Mr. Salehe Nassoro learned counsel submitted that if anything, even the six months probationary period should have been reduced in writing but the applicant actually was an permanent basis employed. That is all.

A brief account of the evidence on record runs as under:-

The applicant testified that on permanent and pensionable basis the respondent employed her on 21/08/2019 in customer service section then, but additionally, for marketing and as receptionist for shs 600,000/= - 800,000/= per month paid through M-pesa that irrespective of several and repeated demands she was not given a written contract and at times she left at 22:00hrs and she signed an attendance register. That as she was now bereaved on 12/03/2020, for that reason she asked for leave of absence but the director refused her permission and nevertheless she left at 1.00 pm and resumed on 16.3.3030. Then the director and manager

asked her to show cause why she shouldn't be terminated. She did it but unsuccessfully. That is it.

Pw1 Hussein Juma Manoni the overall supervisor of the respondent stated that following interview on 14/01/2020 they recruited the applicant on 20/01/2020 but she refused to sign job description (copy of the attendance register-exhibit D1) that she was, through M-pesa paid daily (copy of the statement-exhibit D2), early February she was paid shs 200,000/=, the second salary of shs. 610,000/= on 5/3/2020 also for some days so far worked in March, 2020 she was paid shs. 483,900/= plus 7 days' notice. That as the applicant had asked for leave of absence to attend ceremonies and was granted she signed a respective leave form (copy of letter of termination - Exhibit D3).

PW2 John Kijanga stated that he was manager thereof and the applicant was recruited in January- March, 2020 and they were 5 of them. That they reported at work at 8:00 am, they left at 17.00rhs, they all signed attendance register and were paid through bank or M-pesa. That with respect to the applicant the latter would have signed an employment contract only upon expiry of the six (6) months probationary period.

In his reasons for the award, the Arbitrator found and held that the applicant was terminated only during the first three (3) months after recruitment such that still she was on probationary period given the attendance register so much so that the issue of unfair termination and benefits should not have been raised leave alone institution of the labor dispute (S. 35 (a) of the ELRA and the case of **Mwaitenda Ahobokile Michael** (supra).

It is very unfortunate that the applicant's complaints and evidence that irrespective of several and repeated requests the respondent did not release give her written and signed contract of employment, the Arbitrator just turned a deaf ear. Unless he had interest to save, which, in my considered opinion the serious omission served only adverse purposes, one would have expected the respondent to produce a copy of letter for the alleged probationary term of contract because as opposed to employees, only employers kept records of employment, just like the respondent had with him and he produced copies of the attendance register, with respect to payment of wages a copy of the statement, and a copy of the respective letter of termination (Exhibits D1, D2 and D3) respectively. With greatest respect using an attendance register as proof of the date that the applicant

was recruited, with greatest respect the Arbitrator could not be more incorrect because in all fairness an attendance was not a substitute of letter of engagement and if that was not the case I imagine on that basis habitual absentees would have had multiple recruitments. Had the Arbitrator considered this, in terms of date of recruitment he would have arrived at a different conclusion more so on the issue of how long had the applicant worked with the respondent. The authority in the case of **Mwaitenda Ahobokile** (supra) is distinguishable.

I think like it is the case here, where there was no copy of a written contract of service, the issue of whether he served on probationary or permanent and pensionable contract it shall only be resolved in favour of the employee. Whether or not the applicant was paid hourly, weekly or daily for that matter it was immaterial in my considered opinion. Upon being refused leave of absence the applicant may have had risked the termination yes, but without proof that she had been warned it defeated the good practice much as applicant had absented herself hardly for 2-3 days not the threshold of 5 days. It sounds to me that the applicant was, but prematurely terminated. It would have been a different scenario if the applicant had just like that quitted the work place. Moreover, not only the

Director and manager (DW1 and Dw2) was worth the name no a disciplinary committee, but also the director who refused her leave of absence he also sat in and perhaps chaired the purported committee. What a day light abrogation of the principles of natural justice!

In the upshot, the application is granted. Now that the CMA award is, for the above reasons reversed, the applicant was in fact unfairly terminated. The respondent is, with immediate effect ordered to reinstate the respondent and pay her all the wage arrears or terminal benefit as shall be computed and approved by the CMA. It is so ordered.

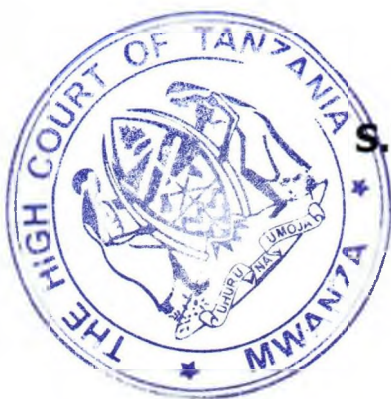
S.M. RUMANYIKA

JUDGE

09/08/2021

Right of revision explained.

The ruling delivered under my hand and seal of the court in chambers this 11/08/2021 in the absence of the parties.



S.M. RUMANYIKA

JUDGE

11/08/2021