

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MUSOMA  
AT MUSOMA  
LABOUR REVISION NO 22 OF 2020**

**GODSON BENARD.....1<sup>ST</sup> APPLICANT**  
**PASENCE PAUL .....2<sup>ND</sup> APPLICANT**  
**HAIDALI YASINI.....3<sup>RD</sup> APPLICANT**

***VERSUS***

**STANLEY ENGINEERING CO. LTD .....RESPONDENT**  
*(Original Labour Dispute Number CMA/MUS/27/2020)*

**JUDGMENT**

*10<sup>th</sup> August & 28<sup>th</sup> September, 2021*

***Kahyoza, J.:***

**Godson Benard (Godson), Pasence Paul, (Pasence)** and **Haidali Yasini (Haidali)** (applicants) were employed by Stanley Engineering Co. Ltd (the Company). The applicants alleged that they were terminated unfairly as the Company did not give them reasons for termination or observe fair procedure. The company contended that she did not terminate the applicants unfairly as they were casual labourers engaged on daily bases depending of the availability of work. The arbitrator found that the applicants were casual labourers and dismissed their claim.

Aggrieved, the applicants instituted the application for revision seeking this Court to revise the decision of the arbitrator and find that the applicant were the Company's employees and casual workers.

The application for revision was heard by written submissions. I will reproduce the submissions when answering the above raised issues.

### **Were the applicants casual workers?**

The Company advanced the evidence that the applicants were casual workers. Kassim Hassan (Dw1) deposed that the applicants were casual workers. The Company paid them Tzs. 10,000/= or more daing depending on the work or hours done. He tendered exhibit D1, pay roll for the month of March, August, 2018 and February, October, December 2019. He also tendered Paul Rwiza's daily time sheet for the month of January, 2020 as exhibit D4 and Godson Benard's daily time sheet for the month of January, 2020, as exhibit D3. He also tendered daily time sheet for the 31<sup>st</sup> day of August, 2018 indicating the names of Nyanda, Haidal, Godson, Kitanjosa and Paul, as exhibit D.2.

The Company's advocate submitted that the arbitrator's award was fair and just. The applicants were casual workers. The nature of the employment was that as "casual workers" they were supposed to sign everyday on attendance book and their salaries were not fixed as for permanent employees. They were paid on daily attendance basis or based on the worker performed. She supported the holding in the case of **Omary Mkele & 20 Others v. M/S Freight Consultant**, Lab Dispute No. 06/2008, Mandia, J. referred to by the arbitrators. He added that the applicants did not adduce evidence to prove that the Company employed them.

The applicants deposed that they were employees of the Company. **Godson** deposed that he was employed in 2016 and he worked for the Company up to 20/1/2020. He deposed that **"Nililipwa kwa siku kutoka na kazi"** Meaning **"I was paid on daily basis depending on the assignment"**. He gave that evidence in chief. On being cross examined, **Godson** testified that **"Niliachishwa kazi na Mkurugenzi, alituambia kazi hakuna toka hapo hakuwahi kutupigia simu tena kama ilivyo kawaida"**, meaning **"the Director terminated me. He told us that there was no work and from that time he did not call us by phone and give us work as usual."**

**Pasence** deposed that he was employed on the 22/2/2018 and on the 20/1/2020 he as usually surprisingly. On the following day, they were told to go back home. They did not know the reason behind the decision of the Company to order them to go home.

**Haidali Yasini (Haidali)** deposed that the Company employed him in august, 2016 up to 2/1/2020. He was bereaved. After mourning the death of his relative, he reported on duty on the 14/1/2020 and his boss told him to wait. He waited. On 17/1/2020 he reported at work. His boss ordered him to go away.

The applicants' evidence was that they were employed on permanent basis and the Company issued them with identity cards. They submitted that if the arbitrator had put consideration to section 61 of the **Labour Institutions Act**, [Cap. 300 R.E. 2019] (the **LIA**) and the evidence on record, it could have found that the applicants were permanent employees.

They submitted that they were given identity cards, they worked for more than 45 hours a day, the Company supplied them tools of work and they worked more than 12 hours a day even on the weekend. They were totally dependent on the Company. They contended that the exhibits tendered by the Company and relied upon by the arbitrator were unreliable. They contended that the documents did not have the Company stamp or bear the date when the payments were effected.

They submitted in their rejoinder that the decision in the case of **Omary Mkele & 20 Others v. M/S Freight Consultant** cited was distinguishable as the Company did not tender evidence to show that the applicants specific work or job.

As shown above the question is simple one, whether the applicants were casual workers or otherwise. The applicants referred me to section 61 of the **LIA**, which stipulates that-

*61. For the purposes of a labour law, a person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one or more of the following factors is present;*

*(a) the manner in which the person works is subject to the control or direction of another person;*

*(b) the person's hours of work are subject to the control or direction of another person;*

*c) in case of a person who works for an organisation, the person is a part of that organization';*

*(d) the person has worked for that other person for an average of at least 45 hours per month over the last three months;*

*(e) the person is economically dependent on the other person for whom that person works or renders services;*

*(f) the person is provided with tools of trade or work equipment by the other person; or*

*(g) the person only works for or renders services to one person.*

The section does not define who is an employee. It gives factors, which must be considered in determining whether a person is an employee. Section 4 of the **Employment Labour Relations Act**, (the **ELRA**) [Cap. 366] defines an employee as the

*"employee" means 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*

*(ii) the other party is not a client or customer of any profession, business, or undertaking carried on by the individual; or"*

To my understanding casual workers are employees. The **Employment and Labour Relations Citation** (Code of Good Practice) Rules, 2007, G.N. No. 42 2007 refer to casual workers as casual employees. A casual employee is an employee whose duration of his

employment is a day as opposed to employees for indefinite duration. Termination of an employee depends on the duration of the contract. It is the termination of the indefinite duration contract, which requires the employer to have a fair reason to terminate and follow a fair procedure. An employee is not required to have reasons and follow the fair procedure on a fixed term contract or specific assignment contract as such contract terminate upon expiry of the duration or upon completion of the work. The employer may only terminate the contract before the expiry of the contract period or before specific assignment is completed, if the employee materially breaches the contract.

In the current case, there is no evidence to prove that the applicants were employed on indefinite duration contract. The evidence of **Godson** clearly shows that the Company summoned the applicants when there was work to perform. **Godson** deposed that he was employed in 2016 and he worked for the Company up to 20/1/2020. He deposed that **"Nililipwa kwa siku kutoka na kazi"** Meaning **"I was paid on daily basis depending on the assignment"**. He gave that evidence in chief. On being cross examined, **Godson** testified that **"Niliachishwa kazi na Mkurugenzi, alituambia kazi hakuna toka hapo hakuwahi kutupigia simu tena kama ilivyo kawaida"**, meaning **"the Director terminated me. He told us that there was no work and from that time he did not call us by phone and give us work as usual."**

Godson's evidence cleared the dust that the applicants were not employed for indefinite duration. They were employed on daily bases or on



special assignment that is when the Company had work to perform. He stated that they were called by phone and told to report to work. Apart from Godson's evidence, the Company adduced evidence showing that the applicants worked on daily bases. The Company tendered the daily time sheet to prove that the applicants were employed on daily bases.

I am of the firm view that section 61 of the **LIA** does not apply to the situation at hand, as the Company employed the applicants. There is no need to apply the section 61, which refers to situations under which person is presumed to be an employee. The issue in this case, therefore should not have been whether the Company employed the applicants, but rather what was the type of the employment contract. It is clear from the evidence on record that the applicants' contract was either daily contract or specific assignment contract. It was never indefinite duration contract. The employer is required to terminate the employee with fair reason and follow the fair procedure only when an employee's contract is for indefinite duration contract. See rule 8(2) of the **Employment and Labour Relations** (Code of Good Practice) Rules, 2007, G.N. No. 42/2007. It stipulates that-

*"(2) Compliance with the provisions of the contract relating to termination shall depends on whether the contract is for a fixed term or indefinite in duration. This means that-*

*(a) where an employer has employed an employee on a fixed term contact, the employer may only terminate the contract before the*

*expiry of the contract period if the employee materially breaches the contract;*

*(b) where there is no breach to terminate the contract lawfully is by getting the employee to agree to early termination;*

*(c) where the contract is for an indefinite duration, the employer must have a fair reason to terminate and follow a fair procedure.*

*(d) the employer may terminate the contract*

*(i) by giving notice of termination; or*

*(ii) without notice, if the employee has materially breached the contract.”*

I am unpersuaded that the applicants were employed for indefinite duration contract. They were casual labourers, employees or workers. Now, that I have answered the first issue negatively, there is no need to answer the issue whether the Company terminated the applicants unfairly.

In the end, I uphold the arbitrator’s decision that the applicants were casual workers for that reason, they not unfairly terminated. Their employment came to an end upon expiry of the duration of their contract. It was a day’s contract. Consequently, I dismiss the application for revision.

It is ordered accordingly.



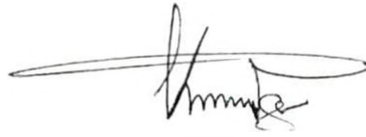
**J. R. Kahyoza**

**JUDGE**

**28/9/2021**



**Court:** Judgment delivered in the absence of the parties with leave of absence. Copies supplied immediately. B/C Ms. Millinga Present.

A handwritten signature in black ink, appearing to read 'J. R. Kahyoza', with a long horizontal stroke extending to the left.

**J. R. Kahyoza**

**JUDGE**

**28/9/2021**