THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(LABOUR DIVISION)
AT MBEYA
REVISION NO. 11 OF 2020
(Arising from the Award of the Commission for Mediation and Arbitration at Mbeya in Labour Dispute No. CMA/MBY/89/2016)

LILIAN SIFAEL.....APPLICANT

VERSUS

MBEYA WATER AND SANITATION AUTHORITY.....RESPONDENT

JUDGMENT

Dated: 21st Sept. & 01st November, 2021

KARAYEMAHA, J

The applicant **Lilian Sifael** filed the instant application seeking for revision of the award of the Commission for Mediation and Arbitration, hereinafter referred to by its acronym, the CMA, in Labour Dispute No. **CMA/MBY/89/2016** delivered on 20/02/2019 by Hon. Naomi Kimambo, Arbitrator. The application was made under section 91 (1) (a), (b) and 91 (2) (b), (c), 91 (4) (a) and (b), and 94 (1), (b), (i) of the Employment and Labour Relations Act, No. 6 of 2004 as amended by section 14 of Act No. 17 of 2010, Rule 24 (1), 24 (2) (a), (b), (c), (d), (e) and (f), 24 (3) (a), (b), (c), (d) (herein the Act) and Rule 28 (1) (b),

(c), (d) and (e) of the Labour Court Rules G.N. No. 106 of 2007 (herein the Rules).

On the other hand, the application supported with the affidavit sworn by Lilian Sifael, the applicant and on the other hand, the respondent is challenging the application through the counter affidavit sworn by Simon Bukuku, respondent's learned Counsel.

Brief facts leading to the present application are as follows; Way back on 24th October, 2015 the respondent Manager through the Board of Directors of Mbeya Water Supply and Sanitation Authority (herein the Board of Directors), advertised a carrier opportunity, namely, a post for Finance. Following the said advertisement, the applicant applied and underwent an interview on 13th February, 2016 in which she emerged the second winner. The post was therefore offered to the first winner. However, due to the qualities the applicant demonstrated in the interview, she was offered a post of Senior Revenue Officer in Commercial Department by the panel with the approval of the Board of Directors on 25/02/2016. Joyfully and without delay, the applicant accepted the offer vide a letter dated 29th February, 2016 and stated that she would start the job on 9th March, 2016. She obliged to her promise and reported at work on that day only to be told to wait. After a month or so she was served with a letter of revocation of employment

dated 14th April, 2016 following the negative recommendations from Coca Cola Kwanza Limited – Mbeya (herein CCK) the applicant's former employer. The revocation of the offer did not bed well with the applicant. She decided to refer the matter to CMA – Mbeya blaming the respondent for breaching the contract between them. The trial Arbitrator was not convinced by her claim and explanations, hence decided against her favour on the reason that there was no contract of employment between her and the applicant. As such, that concrete base she was of the considered opinion that there was no breach of contract by the respondent. The trial Arbitrator, however, awarded the applicant Tshs. 20,000,000/= for revocation of the offer.

Dissatisfied with the CMA award, the applicant has filed the current application seeking for this Court to set aside and quash the impugned award on the following grounds:

1. That the arbitrator seriously erred in law and facts by failure to find that Eng. Simon Mutalemwa Shauri act of terminating the applicant on 14/4/2016 was *ultra vires* because on the first place it was the Board of Directors which employed the applicant and therefore the Board of Directors had the powers to decide otherwise as per the law governing the respondent

2. That the Arbitrator erred in law and fact in holding that there was no contract between the applicant and the respondent and failed to realize that the offer and acceptance was the valid contract.
3. That the Arbitrator erred in law and fact by awarding Tshs. 20,000,000/= without stating explicitly if that was or not general damages hence narrowed the relief claimed by the applicant at CMA.
4. That the Arbitrator erred in law and fact by making an irrational and illegal award without which was not known on contractual relief including but not limited to compensation and restitution for breach of employment contract which was still valid due to lack of revocation by the Board of Directors.

Following those complaints the applicant raised several issues which converge to the following issues:

1. Whether it was proper for the Arbitrator to declare that there was no contract of employment between the applicant and the respondent
2. Whether it was proper to simply ignore the testimony of the applicant.

3. Whether it was proper for the Arbitrator to award general damages of Tshs. 20,000,000/= and failed to award any remedy for breach of contract.
4. Whether the trial Arbitrator properly evaluated the evidence before him.

Reliefs prayed are as follows:

1. To declare that there was a contract between the applicant and respondent.
2. To declare that the respondent revoked the contract not offer of employment.
3. To order restitution of the employment contract or in alternative compensation for the breach of employment of contract.
4. To particularize that amount of Tshs. 20,000,000/= ordered by the Arbitrator as general damages.
5. This application to be granted as prayed in the chamber summons.

The hearing of the matter took a form of written submissions. On the one hand the applicant was represented by Mr. Isaya Z. Mwanri, learned Counsel. On the other hand, Ms. Silvia Mwalwishi, learned Counsel, appeared for the respondent.

Let me start with the 1st issue which is whether there was a contract of employment between the applicant and the respondent. Mr. Mwanri submitted to the effect that when the respondent made an offer to the applicant and applicant accepted it and communicated the acceptance, they formed a valid contract between them. While making general reference to the labour law, law of the contract and case laws, Mr. Mwanri stated that the applicant received an offer from the respondent via a letter with Ref. No. UWSA/MB/CONF/SC/7/170 (exhibit N2) with conditions that if the applicant was willing to be employed by the respondent was required to express her willingness in writing. Thereafter, the applicant accepted the offer via a letter dated 29/02/2016 (exhibit N1) hence finalized a contract. He referred this court to cases of ***Louis Dreyful Commodities Tanzania Limited v Roko Investment Tanzania Ltd,*** Civil Appeal No. 4 of 2013 Court of Appeal Tanzania (unreported) at page 9 and ***Hotel Traventine Limited and two others v National Bank of Commerce Limited*** [2006] TLR 133. The applicant's counsel further referred to section 14 (2) of the Act, sections 2 (1) (a) (b) and (h) and section 5 (1) of the Law of Contract Act Cap 345 R.E. 2019.

The line of argument taken by Mr. Mwanri was opposed by Ms. Mwalwisi who held the view that the offer and acceptance did not

finalize the employment contract. Referring to exhibit N2 the learned counsel stated that the applicant was required to accept the offer of employment and indicate show the date to start the job in order to enable finalization of the employment formalities which was recited by the applicant in the acceptance letter. To her, the formalities which were to be finalized included signing the contract. He argued adding that since those formalities were not fulfilled, there was no valid contract concluded.

The learned respondent's counsel was quite emphatic that offer and acceptance are not the only elements of a valid contract as argued by Mr. Mwanri referring cases of ***Louis Dreyful Commodities Tanzania Limited*** and ***Hotel Traventine Limited and two others*** (supra). Besides, she mentioned the fundamental elements to the contract to include offer and acceptance, intention to create legal relationship and consideration. She held the view that if all these elements exist the contract is valid and enforceable. She said that in the current matter these elements did not exist because the meditated conditions which were to be fulfilled to create a legal and binding relationship had not been done. To support her views, she called to her aid and placed reliance on the decision of the High Court in the case of

WARNERCCOM (T) Ltd v TATA Africa Holding (T) Ltd, Civil Case No. 114 of 2018 at page 13.

Finally, Ms. Mwalwishi observed that elements of contract in the current matter lacked therefore, there was no binding contract between the parties. She remarked that there was no any written employment contract between parties. In respect of exhibit N2, she said that the same did not provide whether the employment contract would be for unspecified period of time, for specified period of time or specific task as provided for by section 14 (a – c) of the Act.

In his laconic but focused rejoinder, Mr. Mwanri submitted zealously that the contents of exhibit N2 required the applicant to accept the offer or reject it.

On employment formalities, Mr. Mwanri observed that those were subject to acceptance not acceptance subject to them. The formalities contemplated by Mr. Mwanri included request for bank account for receiving the salary, orientation and induction courses of employee, introduction of new staff to the company, introduction of new employee's names to other regulatory authorities including Tanzania Revenue Authority (TRA), Social Security Schemes (PSSSF), Workers Compensation Fund (WCF), trade union, if any, office arrangement and handling of working tools.

In respect of creating a legal relationship, Mr. Mwanri firmly stated that the same should be looked at from the angle of the words used by parties in their offer and acceptance. If the words used in the contract be it offer and acceptance intend to create a binding contract by imposing obligation among parties a legal relationship is created. Marrying that position to the current case, Mr. Mwanri submitted that parties agreed and used terms which clearly meant that the respondent employed the applicant and the applicant as well agreed to work for the respondent and stated the commencing date. He was, therefore, convinced that the employer employee relationship was created.

Rejoining in respect of section 14 (1) and (2) of the Act, Mr. Mwanri argued zealously that mandatory requirements were complied with because the offer and acceptance were in writing.

Having considered the learned counsel's arguments, it is clear to me that the applicant on one hand, harbours the feelings that, it was wrong for CMA to declare that she had no contract of employment while she was offered a job which she accepted. These events made her get to conclusion that she is having a valid and binding employment contract. On the other side of the coin, the respondent concedes that there was an offer and acceptance but parties had not finalized the

employment contract. The respondent was of the conviction that the trial Arbitrator did not err in her findings.

I took liberty to look at exhibits N1, N2 N3, N4 and N5. In doing so, I found out that exhibit N1 concerns the minutes of 13/02/2016. This document exhibits that the applicant was shortlisted and interviewed for the post of Financial Manager. The interview results showed that she took the second position. This document states further that, I quote:

> *"Kikao kilibaini kuwa kuna umuhimu wa kuimarisha kitengo cha mapato cha Mamlaka ili kuongeza mapato kwa jumla. Ilipendekezwa kwa kuwa katika usaili wa Meneja wa Fedha aliyekuwa mshindi wa pili alionekana naye ana uwezo mkubwa, ilielekezwa aulizwe kama hata akikosa nafasi ya umeneja wa fedha anaweza kukubali nafasi ya chini yake na baada ya kuulizwa alikubali.* ***Azimio:*** *Bibi Linian Sifael ambaye ana sifa zote hata za kuwa Meneja wa Fedha aajiriwe kama Mhasibu wa mapato..."*

The meeting resolution was that the applicant was highly qualified to the financial post but was the second and therefore be employed as a Senior Revenue Officer in the Commercial Department, gave birth to a letter titled RESULTS OF INTERVIEW FOR THE POST OF FINANCIAL MANAGER (exhibit N2). It was addressed to the applicant communicating the following information, I quote:

> *".... Basing on these results the interview panel with the approval of the Board of Director has recommended offering*

you a different post of Senior Revenue Officer in the Commercial Department. This post has a monthly salary of Tsh. 2,885,000 @117,000 – 3,236,000/= in the scale of UWS 8. Other incentives like house allowance and transport allowance are also provided. This letter requires you to confirm to me in writing whether you accept this offer of employment and the date to start the job in order to enable us finalize the employment formalities."

On receiving that letter, the applicant replied on 29/02/2016 intimating acceptance of the offer. She excitedly, replied as follows, I quote:

"It is with great pleasure that I accept your offer to join Mbeya Water Supply and Sanitation Authority as Senior Revenue Officer in Commercial department. I certainly plan to confirm your trust in my abilities by working hard and smart. I accept a monthly salary of Tsh. 2,885,000 @117,000 – 3,236,000/= as per your scale UWS 8. I understand I will be provided other incentives like house allowance and transport allowance, etc ... I am excited to let you know that I will start my employment on Wednesday 9th March 2016. Please finalize your employment formalities."

A month later, on 14/4/2016 through exhibit N5 the offer of employment was revoked. The Managing Director informed the applicant as follows, I quote:

"... as per your letter, you accepted an offer of employment for the position of Senior Revenue Officer, in Commercial department. Despite of your acceptance, I regret to inform

you that, following the receipt of negative recommendations from your former employer, the Board of Directors has revoked such an offer."

While it is indeed correct to argue that the process of recruiting the respondent was initiated by the Board of Directors of Mbeya Water Supply and Sanitation Authority (herein the water authority) as per exhibit N1 and the evidence of Eng. Simon Mtalemwa Shauri (DW2), I am in agreement with Mr. Mwanri that the revocation decision was not a result of the Board of Director's meeting for lack of minutes to that effect or any evidence. It was made by the Managing Director after receiving recommendations from the applicant's former employer, i.e., CCK embedded in exhibit N4.

From the above quoted contents of the letters and minutes, it is obvious as per both parties converging observations that the applicant was offered an employment opportunity on 25/02/2016, she accepted the offer on 29/02/2016 and the offer was revoked on 14/04/2016 more than a month after it was accepted and the acceptance communicated. From the submissions, it is revealed that both parties are in agreement that there was an offer an acceptance. On my part, guided by the evidence on record, specifically exhibits N1, N2 and B1, I agree with

them. However, they part ways on whether or not there was a valid contract of employment.

I have anxiously considered the rival arguments of the counsel for parties. On my part, I agree with both learned counsels that it is part of our jurisprudence that generally, the Law of Contract Act Cap. 345 R.E. 2019 (herein the Law of Contract) governs all types of Contracts in Tanzania. But for specific types of contracts there are specific laws governing the same, for instance, the Employment and Labour Relations Act Cap. 366 R.E. 2019 (the Act) specifically provides for employment contracts. Nonetheless, some elements of a valid contract such as offer and acceptance are not covered by the Act. It is, therefore, correct to state that the employment contracts are governed by both the Law of Contract and the Act.

Having this position can it be said that there is a contract between parties? On the basis of the testimonies of PW1, DW1 and DW2 along with exhibits N1, N2 and B1 I have noted the following fundamental matters:

First, the Board of Directors offered the applicant a post of Senior Revenue Officer in Commercial department. The same was communicated to the applicant by DW1 via a letter dated 25/02/2016.

The letter went further to mention the salary scale the applicant was to be paid, other entitlements and allowances.

Two, the applicant accepted the offer without reservations on 29/02/2016.

Further, through exhibit N2 the respondent required the applicant to confirm the date of starting the job so that the respondent would finalize the employment formalities. The applicant confirmed that she was going to start her employment on 09/03/2016 hence allowed the respondent to finalize the employment formalities.

A scrupulous review of the above destines me to a conclusion that parties were intending to be bound by the conditions contained in the offer and acceptance. Exhibit N2 signifies willingness on the part of the respondent water authority to offer a job to the applicant on the terms and conditions enumerated therein. The concluding sentence was in the following terms:

> *"This letter requires you to confirm to me in writing whether you accept this offer of employment and the date to start the job."*

Section 2.-(1) (h) of the Law of Contract defines a contract as an agreement enforceable by law. Satisfied that exhibits N2 and B1 together constituted an offer from the respondent and an acceptance by

the applicant respectively, the trial Arbitrator faulted the respondent for revoking the offer which had been accepted. She, however, concluded that offer and acceptance did not constitute a concluded agreement.

On my side, guided by exhibits N2 and B1 as well as sections 2 (a) (b) and 7 of the Law of Contract, parties' intentions constituted a valid contract with a binding effect. I say so because the applicant accepted the terms and conditions embodied in exhibit N2. Therefore, in brief, there was an employment agreement between parties which was governed by the terms and conditions acknowledged by the applicant in exhibit B1.

In the case of ***Brogden v. Metropolitan Railway Co.*** (1877) 2 App. Cas. 666 (HL) Lord Blackburn observed as under –

> *"I have always believed the law to be this, that when an offer is made to another party, and in that offer there is a request express or implied that he must signify his acceptance by doing some particular thing, then as soon as he does the thing, he is bound."*

The respondent had prescribed the mode of acceptance and the respondent did comply with the full knowledge of the respondent. The following but vexing question is whether or not there was an employment contract between parties. My considered view is in the affirmative.

Both counsel had lengthy arguments on the issue of employment formalities. Ms. Mwalwisi argued that the formalities which were to be finalized included signing of the contract. She argued adding that since those formalities were not fulfilled there was no valid contract concluded. On his part, Mr. Mwanri observed that those formalities were subject to acceptance not acceptance subject to them.

Contrary to these appreciated views, my view is that exhibit N2 is very clear and needs neither deep nor wide interpretation. It states at paragraph 5:

> *"This letter requires you to confirm to me in writing whether you accept this offer of employment and the date to start the job in order to enable us finalize the employment formalities."*

The confirmation of the date to start working, was important to enable the respondent finalize the employment formalities. This means, the applicant physical presence was not needed in finalizing the employment formalities. That is my take of the 5th paragraph of exhibit N2. It was, therefore, the respondent's contemplation that after the applicant had confirmed the date to commence working for her, the respondent would immediately finalize the employment formalities. As per the evidence on record the respondent started finalizing the

employment formalities on 29/02/2016 on 09/03/2016 when she reported at work.

From the above facts, I am certain that the respondent contemplated the offer and acceptance as a valid and binding agreement. The applicant's acceptance caused the respondent to proceed with other employment formalities and therefore, the employer employee relationship was created at that time. By all means a valid contract came into existence.

Another aspect worth of discussion is that labour laws, particularly, the Act makes it mandatory for the contract of employment to be in writing. (See section 14 (2) of the Act). The Act does not provide for a hard rule in which the contract of employment should be. If that is the case, the respondent signing on the written offer and applicant signing on the written acceptance, in my view it constituted a written contract of employment in compliance with section 14 (2) of the Act.

Now agreeing that one cannot talk about the employment contract without using the general Law of Contract, it goes without saying therefore that elements of contract in Law of Contract are applicable to the employment contract. In any contractual transaction the following elements under Sections 10, 11 and 12 of the Law of Contract must exist.

Section 10 defines Agreements to be Contracts. The same states:

> *"10. All agreement are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void:*
> *Provided that nothing herein contained shall affect any law in force, and not hereby expressly repealed or disapplied, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."*

Further to that, section 11 (1) and (2) of the Act (Supra), provides for the persons competent to contract and the remedy to the Agreement which has been contracted by incompetent party, the same states:

> *11. (1) Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.*
> *(2) An agreement by a person who is not hereby declared to be competent to contract is void."*

Further, section 12 (Supra) refers to what is a sound mind for the purposes of contracting. The same provides:

> *12. (1) a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational Judgment as to its effect upon his interests.*

(2) A person who is usually o f unsound mind, but occasionally o f sound mind, may make a contract when he is o f sound mind.

(3) A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

From the above definition of the term agreement/contract, in my view, essential ingredients to the same which must be in place in order to make an agreement valid includes: free consent, competency or capacity to contract and lastly lawful consideration or object. All these exist in the present matter.

Ms. Mwalwisi argued forcibly that the offer and acceptance in this matter did not finalize the employment contract. She submitted that the fundamental elements to the contract are offer and acceptance, intention to create legal relationship and consideration. She held the view that if all these elements exist, the contract is valid and enforceable. She said that in the current matter these elements did not exist because the meditated conditions which were to be fulfilled to create a legal and binding relationship had not been done.

Mr. Mwanri correctly observed that words used by parties in their offer and acceptance letters intended to create a binding contract by imposing obligation among, as such, a legal relationship was created. I

absolutely agree with him. The offer and acceptance, first of all, met the conditions provided for under section 14 (2) of the Act. They also complied with sections 10, 12 and 13 of the Law of Contract Act. Further to that, fundamental elements to the contract, that is, offer and acceptance, intention to create legal relationship and consideration exist abundantly. The respondent offered a job and the applicant accepted. In offering and accepting, the words used were calculated to create and indeed created a legal relationship between the applicant and respondent. The job was to be done at a monthly salary of Tsh. 2,885,000 @117,000 – 3,236,000/= in the scale of UWS 8, which, in my view, is a consideration.

To cum it all, Ms. Mwalwisi got it wrong and the learned Trial Arbitrator's conclusion on this aspect was also wrong. I say so because once an acceptance has been made and communicated it amounts to binding contract. In view thereof, the Managing Director of the respondent wrongly applied the principles of revoking the offer. Section 5 (1) of the Law of Contract provides that an offer may be revoked at any time before the communication of its acceptance as against the proposer but not afterwards. Revoking it a month or so after it had been accepted and the applicant had reported at work place was indeed a violation of the law. However, the respondent was not curtailed from

breaking the contract. While authorized by law to do so, she had to observe all procedures of terminating the employment contract. In addition the law did not allow the Managing Director to revoke the offer. It was the Board of Directors with that mandate. He, therefore, acted *ultra vires*. What does this mean, the revocation was *void ab initio*.

On a full consideration of the available evidence and the law on the issue, I am of the settled view that the applicant and the respondent had a valid and binding contract of employment.

Let me now turn to issue Number three because issue number two was abandoned by the applicant, as to whether it was proper for the arbitrator to award general damages of Tshs, 20,000,000/= and failed to award any remedy for breach of contract.

On this area, this court has already decided that the respondent breached the contract of employment. It is evident also that the Managing Director being the Principal Officer of the respondent signed the revocation of offer without the approval of the Board of Directors. The position is that the Managing Director manages day to day affairs of the Water Authority but that is subject to the directions of the Board. This means that before executing any action or decision, must first take directives of the Board of Directors. That is the law and no magic can undo it. In her testimony, Jane Hamis Mwanjejele (DW1) testified at

page 13 that all affairs of the Water Authority are managed by the Board of Directors including employment. Scanning from her testimony, it was/is the Board of Directors which has powers to employ and terminate employees of the Water Authority.

In a nutshell, therefore, to establish that the applicant's offer was legally and procedurally revoked, the respondent was bound to produce the evidence. In this matter there is no iota of evidence to prove that the Board of Directors convened and resolved to revoke the offer.

No wonder that after deciding that there was no contract of employment between the applicant and the respondent, the trial Arbitrator had no other option than passing orders that the applicant was not entitled to damages for breach of contract of employment.

That conclusion brings me to the last issue which concerns the reliefs. Mr. Mwanri laments bitterly on the general damages awarded to the applicant of Tshs. 20,000,000/=. This, to him, is the critical part of the award which is weak in relation to the findings that there was no breach of employment contract. Conceding that that general damages were awarded at the discretion of the court as per the case of ***Consolidated Holding Corporation v Grace Ndeana*** [2003] TLT 191, he said that the trial Arbitrator had to award damages for breach of contract of employment.

Mr. Mwanri is contented with the awarded amount, but faults the trial Arbitrator's decision not to grant relief for the breached contract of employment. I wish to pose here and observe that irrespective of whether she was right or wrong, it could not be easy for the trial Arbitrator to grant the reliefs because she had concluded that there was no employment contract between the parties. Seeking aid of section 73 (1) of the Law of Contract Mr. Mwanri remarked that any person who suffers from breach should be compensated for that breach. Mr. Mwanri's conviction is that since the applicant's employment has never been terminated, it would be fair and just for this Court to order payment of compensation of Tshs. 100,000,000/=, re – employment by reinstatement of the applicant. To solidify his position, he placed reliance on the case of ***Mohamed Idrissa Mohammed v Hashim Ayoub Jaku*** [1993] TLR 280 where by the court of Appeal observed that the court can order specific performance when the other party refuses or fails to perform the contract.

Ms. Mwalwisi's conception of this issue is different. Briefly, she submitted that the respondent was not entitled to any reliefs because there was no any legal relationship between the parties. She said that reliefs are granted in terms of section 40 (1) (a) of the Act where it is established that there was unfair termination. Moreover, she was very

quick to observe that section 35 of the Act excludes employees with less than six (6) months of employment to compensation.

In his rejoinder, Mr. Mwanri said that the applicant's claim is centered on the argument that there was no proper decision on the breach of contract and the contract was not revoked. To him what was revoked was an offer. Therefore, the applicant was to be re – employed. The question is whether that was one of the prayers fronted at CMA. The answer is in the negative.

In respect of the reliefs, Mr. Mwanri did not have a word on section 40 (1) (a) or 35 of the Act. He, however, reiterated his submission in chief regarding their reliance on the law of contract to benefit from the reliefs.

This court has made a finding that general principles of Law of Contract will be applied in this matter. Applying it, it has been concluded that in all circumstances parties had a valid contract the termination of which obviously sinned against the labour laws and the clear provisions of section 17 (4) of the Water Supply and Sanitation Act No. 5 of 2019 which provides that:

> *"The Managing Director shall be the principal officer of the water authority and, subject to the directions of the Board, shall be responsible for the day to day management of the affairs of the water authority."*

The vexing question at this juncture is what reliefs should be awarded to the applicant. I pose this question because in Form No. 1 (referral of a dispute to the commission), the applicant termed the nature of dispute as *breach of contract*. It was not about *termination of employment*. In my view, therefore, provisions of section 40 and 35 of the Act are not applicable. The applicant forecasted the outcome of mediation to be payment as per the schedule which is:

1. Salary of March and April 2016.....Tshs. 5, 770,000/=
2. Housing allowance of March and April 2016.....Tshs. 577,000/=
3. Transport allowance for March and April 2016.....Tshs. 360,000/=
4. Airtime allowance for March and April 2016.....Tshs. 200,000/=
5. Responsibility allowance for March and April 2016..Tshs.461,600/=
6. Damages for breach of contract.....Tshs. 100,000,000/=

These were claims which formed the base of the trial in CMA and baking on them the Arbitrator came out with the impugned award.

Strangely, the applicant has emerged at this level of revision with new prayers, to wit, **first,** declaration that the respondent revoked the contract not offer of employment and **second**, order restitution of the employment contract or in alternative compensation for the breach of employment of contract. Obviously, these claims needed the respondent

to respond to them and give evidence or encounter them during the trial. Raising them at this level, in my view, is wrong and unprocedural. Similarly, the revision is intended to default errors committed by CMA. Since, the trial Arbitrator had no opportunity to deliberate on them, she cannot be faulted. As a general rule, therefore, new issues are not supposed to be raised at the revision stage.

Bringing home the point, this court has already declared that the applicant and respondent had a binding agreement. Therefore, the employer employee relationship existed. It was also illegal for the Water Authority Managing Director to revoke the offer without directions of the Board of Directors.

Since the respondent breached the binding agreement, I share the Trial Arbitrator's views that there is no wrong without remedy (*ubi jus ibi remedium*). For her wrong, the respondent should compensate the applicant Tshs. 50,000,000/=.

Regarding the prayer of general damages, this was not one of the prayers tabled before CMA. But in her findings, the Arbitrator considered the laments of the applicant in her evidence that she was affected psychologically, as female she was suppressed because she was to be given first priority in the interview, time wasted going to her working place and later told to wait. All these made her to award Tshs.

20,000,000/= as general damages. Apparently, the respondent has no problem with that. Her pleadings speak it open and loud.

It is evident that after accepting the offer, the applicant made it clear that she would start to work on Wednesday 9th March, 2016. According to her evidence, she went to work but was told to wait. Later she was served with a revocation letter. Well, we may invoke the requirements of section 60 (2) (a) of the Labour Institutions Act [Cap. 300 R.E. 2017] that the applicant needed to prove that fact. However, the question that comes to the fore is whether or not, the applicant was able to access the attendance register or was she given an opportunity to sign in any register. On this I am behooved to believe her testimony she gave on oath and disregard any contention that might be deceiving. Since she had legitimate expectation and remained more than a month waiting to be called, I think it is proper to award her a Salary of March and April 2016 Tshs. 5, 770,000/=, Housing allowance of March and April 2016Tshs. 577,000/=and Transport allowance for March and April 2016 Tshs. 360,000/=. Airtime allowance was to be paid when she was performing official duties and responsibility allowance. I decline to grant these two.

In view of the above, this Court settles for the following orders:

1. That the application is partly allowed.

2. That the applicant should be paid Tshs. 50,000,000/= by the respondent being compensation for breaching the contract for employment.
3. Tshs. 20,000,000/= should be paid to the applicant by the respondent as general damages.
4. That the applicant should be paid Tshs. 5, 770,000/= being salary of March and April, 2016.
5. The applicant should be paid Tshs. 577,000/= being housing allowance of March and April, 2016.
6. The applicant should be paid Tshs. 360,000/= being transport allowance for March and April, 2016.

It is so ordered.

Dated at **MBEYA** this **1st** day of **November, 2021**

J. M. Karayemaha
JUDGE