IN THE HIGH COURT OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

LABOUR REVISION NO. 2 OF 2021

(Originated from Labour Dispute No. CMA/RUV/SONG/83/2019/ARB)

ISSA MOHAMED MAKALANI.....1ST APPLICANT

SAID YASSIN ISSA..... 2ND APPLICANT

VERSUS

HUSSEIN R. DHALA..... RESPONDENT

JUDGEMENT

23.09.2021 & 23.11.2021

U. E. Madeha, J.

The applicant, Issa Mohamedi Makalani and Saidi Yasini Issa, are aggrieved with the award of the Commission for Mediation and Arbitration [herein to be referred to as "CMA" in the labour dispute No. CMA/RUV/SON/83/2019/ARB. The applicant has filed an application praying for revision against the decision of the CMA, which was decided in favour of the respondent, Husein Dhala. The application was supported by Mr. Issa Mohamedi Makalani's affidavit. In opposition, the respondent filed his counter affidavit to oppose the application. The applicants were both employed in 2014 by the respondent and were terminated from employment

in 2020. After their employment contracts expired, they were no longer required to work. They filed the dispute at the CMA, but it was dismissed for lack of evidence that the respondent employed them for permanent service. When the case was scheduled for the hearing, the applicants was represented by Mr. Edmundi Nditi, the personal representative, while the respondent was represented by Mr. Kitara Mungwe, the learned advocate.

The applicant's personal representative, Mr. Edmundi Nditi, prayed that the applicant's affidavit be adopted and be part of the submissions. The applicants are to be paid the terminal benefits as shown in the CMA pleadings. Also, the Court should quash the decision of the CMA and its award, considering that the applicants have worked for one employer for a period of seven years.

Mr. Kitara Mungwe submitted that the CMA award has to be maintained. The applicants were paid daily wages because they were not employed permanently and they were not supposed to be given terminal benefits. The counsel for the respondent believes this court has to determine whether there was an unfair termination and what relief was given to both parties. In view of the grounds of revision raised, the issues here are:

1. Whether or not there was employer/employees' relationship.
2. Whether the applicant was employed by the respondent.
3. Whether the respondent had a valid reason for terminating the applicant's employment.
4. Whether the respondent adhered to the procedures for terminating the applicant.

To begin with the first issue: whether there was an employer-employee relationship. Section 4 of the Employment and Labour Relations Act [CAP. 366 R.E. 2019], defines the employment relationship. The law establishes the boundaries between an employer and an employee section 4 of Cap 366 must be read together with section 61 of the **Labour Institution Act Cap 300 (R.E. 2019),** which outlines the considerations to be considered when assuming the existence of an employment relationship and from which I hereby quote:

> *"Section 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;"*

The CMA found that the employment contract, if any, was one of casual employment, which the applicants challenged. In our jurisdiction, the casual employee system existed in the past but not under the present labour laws. We do not have a casual employee system. The only system of employment that is known in our jurisdiction has been provided for under section 14(1) of the Employment and Labour Relations Act, Cap 366 R.E. 2019. Also, in the case of **Abel Kikoti and others Versus Tropical Contractor Ltd.** Revision No. 305 of 2019, the Court stated that the law recognises three types of employment, namely: contract for an unspecified period of time, contract for a specified period of time; and contract for a specific task.

Having gone through the CMA record, I have noted that the applicants were not paid monthly, but after every two weeks. The hours of work were not subject to the control and direction of the respondent. Employees claim that they have been working to the respondent for seven years for the first applicant and two years for the second applicant, but details of the

employment itself have not been shown in the CMA case records. There is no information in the evidence concerning a written statement of particulars that the applicant was employed as to who is the employer and under which description of employment as provided under section 15 of the Employment and Labour Relations Act [CAP. 366 R.E. 2019]. For easy reference, I hereby quote:

> *"15.-(1) Subject to the provisions of subsection (2) of section 19, an employer shall supply an employee, when the employee commences with the following particulars in writing, namely-*
>
> *(a) name, age, permanent address and sex of the employee;*
>
> *(b) place of recruitment;*
>
> *(c)job description;*
>
> *(d) date of commencement;*
>
> *(e) form and duration of the contract;*
>
> *(f) place of work;*
>
> *(g) hours of work;*

(h) remuneration, the method of its calculation, and details of any benefits or payments in kind; and

(i) any other prescribed matter."

An employee must be supplied with a written statement of particulars containing the terms listed above. The respondent did not furnish the applicants with a written statement of the particulars of the employment contract. It is the duty of the employer to make sure that all written particulars or the ingredients of the contract are explained to the employee in a language that is easily understood by the employee. The applicants have worked for the respondent for seven years without being given a contract of employment so that it could protect them in the future after the employment contract expires or otherwise. The applicants left a gap by not asking for a contract of employment.

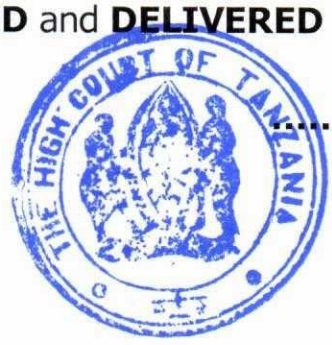
Therefore, there is no proof, such as the contract of employment, which shows that the applicants worked under the respondent's supervision and direction from 2014 to 2020, when they were terminated. According to section 35 of the Employment and Labour Relations Act [CAP. 366 R.E. 2019], it is evident that the applicant and the respondent had an employer-

employee relationship, which, according to section 35 of the Employment and Labour Relations Act [CAP. 366 R.E. 2019], does not apply and cannot be entertained by the law.

In the circumstances, I see no basis to question the CMA's finding. As a result of these findings, I believe the second, third, and fourth issues which are all answered negatively, and I will not address them because there was no employment contract relationship and thus the issue of substantive and procedural fairness in termination cannot arise.

This application lacks merit, and I dismiss it accordingly. I give no order to the costs.

DATED and **DELIVERED** at **SONGEA this** 23rd day of November **2021**



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U. E. MADEHA
Judge
23/11/2021