

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

LABOUR REVISION NO. 5 OF 2021

(Arising from Labour Dispute No. CMA/KIG/202/2020)

DAUDI JEREMIA MAGEZI APPLICANT

VERSUS

SINOHYDRO CORPORATION LIMITED RESPONDENT

JUDGMENT

11/11/2021 & 24/1/2022

MLACHA, J.

The applicant, Daudi Jeremia Magezi filed this revision seeking to revise the decision of Commission for Mediation and Arbitration for Kigoma (the CMA) made in CMA/KIG/202/2020 in favour of the respondent, SINOHYDRO CORPORATION LIMITED who was his employer. The respondent company is based in Kibondo District, Kigoma Region and deals with road construction. The applicant's case was based on unfair termination, payment of unpaid salaries, twelve months salary for non compliance with the Law. He also prayed to be given a certificate of service. The CMA found the case as baseless and dismissed it save for the

certificate of service which was found to be his right and ordered to be given to him. Aggrieved by the decision, he came to this court by way of revision under section 91 (1) (a), 91 (2) (b), (c) and 94 (1) (b) (i) of the Employment and Labour Relations Act, Cap 366 R.E. 2019 and Rule 24 (1), (2) (a), (b), (c), (d), (e), (f), 24 (3) (a), (b), (c) and 28 (1) (c), (d), (e) of the Labour Court Rules, GN. 106/2007. The application seeks for the following orders;

- 1. That, this Honourable Court be pleased to call for the records of the Commission for Mediation and Arbitration at Kigoma in Labour Dispute No. CMA/KIG/202/2020 before Hon Stanslaus, H (Arbitrator) to examine the records, proceedings and award of the said Commission in order to satisfy itself on the legality and propriety of the proceedings and award in the said Labour Dispute.*
- 2. That, this Honourable Court be pleased to quash the said proceedings, award and orders contained thereof and determine the rights of the Applicant.*
- 3. Any other relief(s) this Honourable Court may deem fit and just to grant.*

Before going to consider the revision, a bit of the background information may be useful. The record reveals that the applicant was employed as a casual employee (kibarua) on 7/3/2020 to work at a store at a salary of 350,000 per month. He worked up to 2/5/2020 when all the employees

were laid off due to the outbreak of COVID 19. He came back on 11/6/2020 where he was engaged as an occupational health officer (afisa afya na usalama kazini) at a monthly salary of Tshs. 375,000/=. He worked up to 12/8/2020 when he was arrested on allegations of stealing diesel. He was sent to Kibondo Police Station and later charged before a court of law. He won the case. He came back on 29/9/2020 with a copy of the judgment seeking to go back to work. He could not be successful. Efforts to do so through the office of the District Commissioner and the Mediation procedure of the CMA could not be successful hence the arbitration which was decided against him.

The decision of the CMA is based on section 35 of the Employment and Labour Relations Act which provides that a person cannot sue for unfair termination if he had not worked for a period exceeding six (6) months with the same employer whether under one or more contracts. It had the view that the applicant had worked with the respondent for two periods under two different capacities; from 7/3/2020 up to 2/5/2020 (one month and 26 days) and from 11/6/2020 up to 12/8/2020 (2 months and one day). And that even if the two periods are added up, it cannot exceed six (6) months as required by the Law. It also found that there was no evidence showing that the applicant was prevented to enter at the gate

when he came to report after being bailed out and later being acquitted. It held that he had absconded from 15/8/2020 up to 29/9/2020. In all the claims were found to be baseless as aforesaid and dismissed.

I had time to examine the records. As hinted above, this is a case for unfair termination. Reading through the record, I could not see any material irregularity calling for the exercise of the revision powers of this court. The record is clear that the applicant worked for only four months. He did not work for a period exceeding six months so as to qualify to file a case for unfair termination. In **David Nzaligo v. National Micro Finance Bank PLC**, Civil Appeal No. 61 of 2016, the Court of Appeal had this to say at page 21;

*"Section 35 of the ELRA provides that the provision of part III subpart E shall not apply to an employee with less than 6 months employment with the same employer, whether under one or more contracts, **means that a worker with less than 6 months of employment may not bring an unfair termination claim against the employer, as held by the judge.**"*[Emphasis added]

The court went on to say the following;

"a probationer in such a situation, cannot enjoy the rights and benefits enjoyed by a confirmed employee."

It means that, for a person to sue for unfair termination he must have been in the employment of the employer whether permanent or temporary, for a period exceeding six (6) months and must not have been in the probation period.

There is no evidence showing that the applicant was in a probation period or had any probation period. It appears that he was employed without a probation period. That means that all his days must be counted, when determining his period of employment. All days counted as pointed out, he had only four months, a period which is less than the period required under the law. He cannot therefore sue for unfair termination making the decision of the CMA sound in Law. See also **Afrexa v. Ramadhani Bakari**, Revision No. 94 of 2016 High Court Labour Division Dar es Salaam (unreported). Further, my look at the record did not come across any letter of appointment or records of service which were necessary to show that he was real employed and what were the terms. I could only get his word of mouth which may not be correct at all times.

That said, the application is found to be devoid of merits and dismissed.





L.M. Mlacha

JUDGE

24/1/2022

Court: Judgment delivered in the presence of the applicant in person.

The respondent is represented by Mr. Silvester Damas Sogomba holding the brief of Michael Mwangati.

Right of appeal explained.



L.M. Mlacha

JUDGE

24/1/2022