

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA**  
**REVISION NO.74 OF 2021**

*(Originating from Labour Dispute No.CMA/ARS/ARS/31/2021 at Commission for Mediation and Arbitration at Arusha)*

**ISABELA TARIMO.....APPLICANT**

**VERSUS**

**SOJEMA PRE & PRIMARY SCHOOL.....RESPONDENT**

**JUDGMENT**

*Date of last order: 17-5-2022*

*Date of Judgment: 14-6-2022*

**B.K.PHILLIP,J**

The applicant herein was employed by the respondent on 24<sup>th</sup> August 2019 as a teacher, for a monthly salary of Tshs 200,000/= . She signed a contract of employment for one year. Her contract of employment was terminated on 18<sup>th</sup> December 2020 by a letter which she was served by her employer ( the respondent herein ). Aggrieved by the termination of her employment, she lodged her complaint at the Commission for Mediation and Arbitration at Arusha ( Henceforth " the CMA" ) vide Labour Dispute No.CMA/ARS/ARS/31/2021 in which she claimed that the termination of her employment was unfair on the ground that there was no good reason for termination of her contract of employment which was supposed to come to an end on 30<sup>th</sup> December 2020 and there were

flaws in the procedure adopted by the respondent in the termination of the Contract of employment. The applicant's claims were as follows;

- i) Unpaid salaries for April, May, and June, 2020...Tshs 600,000/=
- ii) One month salary in lieu of notice.....Tshs 200,000/=
- iii) Compensation for unfair termination .....Tshs 2,400,000/=
- iv) Annual leave.....Tshs200,000/=
- v) Certificate of service.

The respondent was summoned to appear before the CMA but did not do so. Consequently, the applicant's complaint was heard ex-parte in the absence of the respondent. The Arbitrator awarded the applicant a sum of Tshs 1,085,714/=, being three months salary –Tshs 600,000/=, One month salary in lieu of notice –Tshs 200,000/= , leave pay –Tshs 200,000/= and Salary for 12 days – Tshs 85,714/=.

Aggrieved by the aforesaid award, the applicant has lodged this application under the provisions of sections 91 (1) (a), (b) (2)(a) (b) (c) and 94 (1) (b) (i) of the Employment and Labour Relations Act No.6 of 2004 , Rules 24(1), (2) (a) (b) (c) (d) (e) (f), (3) (a) (b) (c) (d) , 28 (1) (a) (b) (c) (d) and (e) of the Labour ' Court Rules, G.N. No. 106 of 2007, praying for the following orders;

- i) That this honourable Court be pleased to revise the proceedings and Ruling made by the Mediator / Arbitrator in employment dispute No.CMA/ARS/ARS/31/2021.
- ii) That this Honourable Court be pleased to order the Commission for Mediation and Arbitration to determine the matter on merit.

- iii) Any other relief this Honourable Court deems fit and just to grant.

The application is supported by an affidavit sworn by the applicant. The respondent's principal officer Mr. Barnabas Longi'idu filed a counter affidavit in opposition to the application.

The learned advocate Fransisca Lengeju appeared for the applicant whereas the respondent was represented by Mr. Barnabas Longi'idu, the applicant's principal office. I ordered the application to be disposed of by way of written submission. The applicant's advocate filed her submission as ordered by the Court and served the same to the respondent. On part of the respondent, I have noted that there is written submission purported to be filed for the respondent. The same shows that it was prepared and signed by Mr. Kenneth Samwel Ochina who is not an advocate. Therefore, he is not authorized to practice as an Advocate pursuant to the provisions of section 41(1) of the Advocates Act which provides as follows;

*Section 41(1): "No unqualified person shall act as an advocate, or agent for suitors or , as such, issue out any summons or other process, or commence, carry on or defend any action, suit or other proceeding in the name of any other person or his own name, in any Court of Civil or Criminal Jurisdiction ,or act as an advocate in any cause or matter , civil or criminal"*

For clarity let me reproduce hereunder what appears at the end of the submission purported to be prepared for the respondent.

**"DRAWN AND FILED BY:"**

*Kenneth Samwel Ochina,*

*C/o Mofulu Advocates*

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In fact, Mr. Kenneth Samwel Ochina has never appeared in this application in any capacity. Under the circumstances I hereby expunge from the Court's record the purported written submission for the respondent prepared and signed by the Mr. Kenneth Samwel Ochina. Thus, in this judgment I will consider the written submission filed by Ms. Lengeju only.

Submitting for the application, Ms. Lengeju argued that the Arbitrator erred in law and fact by not awarding the applicant compensation for unfair termination without giving any legal justification. She contended that the Arbitrator made a finding that the applicant was unfairly terminated, but did not award the applicant in accordance with the provision of section 40 (1) ( c) of the Employment and Labour Relations Act, ( ELRA) which

provides that if the Arbitrator or Court finds that termination is unfair then, may order the employer to pay the employee compensation of not less than twelve months remuneration. She contended that the applicant proved before the CMA all her claims which were to a tune of Tshs 3,400,000/= but the Arbitrator awarded her a sum of Tshs 1,085,714/= only without giving any reasons.

Moreover, she submitted that the award for compensation is made under the discretionary powers of the Arbitrator. However, under the provisions of sections 91 (2) (a) - (c) of ELRA this Court has powers to revise the award made by the Arbitrator. She cited the case of **Selcom Gaming Limited Vs Gaming Management ( T) and Gaming Board of Tanzania (2006) TLR 200.**

Having analyzed the submission made by Ms. Lengeju and perused the Court's records, I have noted that the applicant's testimony before the CMA was to the effect that she was employed under a fixed term contract of employment for one year. The same was supposed to expiry on 30/12/2020. However, she did not tender that contract as exhibit at the CMA. Her major complaint was that, she was served with a letter for termination of her contract of employment on 18<sup>th</sup> December 2020, that is, 12 days before the expiry date of her contract of employment.

In addition to the above, in her supplementary affidavit the applicant deponed that her employment contract was automatically renewed on 31<sup>st</sup> October 2020, thus it was supposed to expiry on 31<sup>st</sup> October 2021. Not only that she also annexed a letter which was not tendered in evidence at

the CMA. It is noteworthy that this Court is an appellate Court. It does not receive any exhibits/ new evidence unless it is moved to do so and grants the leave to adduce additional evidence in a manner it deems fit. In short, the aforesaid averment made by applicant in her supplementary affidavit is not supported by what was testified before the Arbitrator by the applicant. It is pure afterthought which cannot be of any help to the applicant.

Since the evidence on record has revealed that the applicant's employment was under a fixed term contract of employment, it is obvious that the same is not governed by the provisions of section 40 of the ELRA which provides for reliefs for unfair termination and the same is under Sub-part "E" of the ELRA. So, the arguments raised by Ms. Sengeju on compensation for unfair termination are totally misconceived. The rights of employees working under fixed term contracts of employment are governed by the provision of section 41 (1) of ELRA which is under sub-part "F" of the ELRA. In addition, Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007 provides as follows;

*" where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise".*

In the instant application no any evidence was adduced at the CMA to prove that the applicant's Contract of Employment was renewed.

With regard to the award made by the Arbitrator, I do not see any plausible reasons to revise the award made by the Arbitrator, since it is made in accordance with what is provided in the Labour laws. However, I hereby order that the respondent should issue a certificate of service to applicant. It is so ordered.

Dated this 14<sup>th</sup> day of June 2022.



A handwritten signature in black ink, appearing to read "B.K. Phillip", is positioned above the printed name.

**B.K.PHILLIP**

**JUDGE**