

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

LABOUR REVISION NO. 21 OF 2021

(ORIGINAL CMA/TAN/37/2018/19/ARB)

AFRITEA & COFFEE BLENDERS

(1963) LIMITED.....APPLICANT

VERSUS

NASRA AMIR IDD.....RESPONDENT

JUDGEMENT

10TH JUNE 2022
L. MANSOOR, J

Nasra Amir Idd "the respondent" was employed by the Applicant in the Sales Department. It was an oral employment agreement. While the Applicant alleges that the employment was for a specified term of one year starting on 9/1/2017, and ought to have ended on 8/1/2018, the respondent alleged that the employment was for unspecified period.

The provision of the law is clear, and as provided in section 15(6) of the Employment and Labour Relations Act, it is the duty of the employer to produce a written contract or written



particulars of employment, and the burden of proving or disproving an alleged term of employment lies on the Employer.

As correctly held by CMA, since the employer failed to produce before it the written contract showing that the employee was employed for a specific term or even the particulars of employment of the employee which would have proved that the employee was employed for a specific term of one year, the Applicant failed to discharge the burden of proof which under section 60 of Labour Institutions Act, 2004 lies on him.

On whether the employment contract was of a fixed term or an unspecified term, the Learned Arbitrator did not err when he relied on the provisions of the law and also the case of **Charles Filippo Machengejo vs District Executive Director, Misungwi District Council (2015) LCCD160**, in holding that the employer had the duty of proving the term of the employment contract, and since he was not able to do



that before the CMA, he failed to discharge the duty, and thus as correctly concluded by the CMA, the employment was for a unspecified term and did not end on 08th January, 2018.

The 2nd issue is whether there was a breach of the employment contract, it is true that the respondent was suspected to have caused the loss to the employer or that maybe she stole the money, and she was charged for stealing from the employer, and the criminal case is not yet finalized. There were no submissions from the applicant regarding this point, the submissions of the applicant only states that since the contract of employment had expired, the employer had no duty to follow the procedures for suspension stipulated under the labour laws. I have held that the employment contract did not expire since the employment was for an unspecified term, thus the procedures for suspension paving way to investigation of a criminal charge or finalization of a criminal case should have been followed. As provided in section 27 (1)-(5), of the Employment and Labour Relation (Code of Good



Practice) Rules, 2007 (G.N No. 42 of 200), an employee charged with a criminal offence may be suspended on full remuneration pending final determination by a court and any appeal thereto, on that charge.

The employer, the applicant herein should not have stopped the respondent from resuming the office after she was granted the police bail, and if the employer wanted her suspended till the finalization of the criminal charge, the employer was duty bound to give her a suspension letter and continue to pay her salaries until the criminal charges were finalised.

On the 2nd issue as well, there are no any material irregularities found in the Award issued by the Arbitrator to warrant the intervention of this Court by Revision.

In the submissions of the parties, both counsels have introduced issues which were not pleaded. The Applicant's Counsel introduced an issue of the signature of the Arbitrator

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in the proceedings, and the Counsel for the Applicant has introduced an issue of the date of service of the CMA Award to the Applicant for purposes of counting the period of six weeks limitations provided in section 91 (1) (a) of the Employment and Labour Relations Act. I shall decline from entertaining both points as they were not raised in the pleadings. The Award was issued based on the issues raised and has been decided on all the points which arose on the evidence led by the parties. No amount of evidence can be investigated, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings, and which was not the subject matter of an issue, cannot be decided by the Court. Nor can it grant a relief which is not claimed, and which does not flow from the facts and the cause of action alleged in the plaint. Also, factual issue cannot be raised or considered for the first time in the appeal.

Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The object and purpose of pleadings and issues is to ensure that

A handwritten signature in blue ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be a personal name.

the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on causes must take.

It is unknown procedure of allowing the parties to introduce new issues in the submissions or adduce evidence on points not raised in the pleadings. This is irregular and should not be allowed unless parties have been allowed to amend the pleadings and raising the necessary issues. If the issue is on points of law, the procedure is clear, that a party with the preliminary objection should file the notice, and the issue of law would have been determined first before the issues of

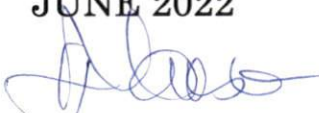


facts. Raising an issue, even the issue of law in the final written submissions is irregular and contrary to natural justice, and this court cannot condone such irregular procedures.

Consequently, the application for revision being unmeritorious, is hereby dismissed. The Award issued by CMA in CMA/TANG/37/2018/19ARB, on 08th November 2019, by Hon. Mwaikambo, the Arbitrator is hereby confirmed.

**DATED AND DELIVERED AT TANGA THIS 10TH DAY OF
JUNE 2022**




LATIFA MANSOOR
JUDGE
10TH JUNE 2022