

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

LABOUR REVISION No. 34 OF 2021

(Arising from the Labour Disputes No. CMA/MZ/NYAM/33-45/2021)

BETWEEN

JANET MMARY APPLICANT

AND

MWATEX (2001) LTD RESPONDENT

JUDGMENT

16/6/2022 & 5/8/2022

ROBERT, J:-

The applicant, Janet Mmari, seek to revise the decision of the Commission for Mediation and Arbitration (CMA) for Mwanza in Labour Dispute No. CMA/MZ/NYAM/33-45/2021. The application is grounded on the reasons stated in the affidavit sworn by the applicant in support of this application.

Briefly stated, facts giving rise to this application reveals that, the applicant was employed by the respondent in November, 2017 as the Human Resources Manager and terminated in January, 2021 on the grounds of poor working performance. Aggrieved, she successfully filed a complaint at the CMA which decided that her termination was both substantively and procedurally unfair and awarded her compensation of

six months remuneration. Dissatisfied with the award given, the applicant preferred this application.

On 21st April, 2022 when this revision came up for hearing, the applicant enjoyed the legal services of Mr. Innocent Benard, learned counsel whereas the respondent was represented by Mr. Mathias Mwira, learned counsel. Hearing proceeded by way of written submissions.

Submitting in support of this application, the learned counsel for the applicant faulted the arbitrator's order of compensation for twelve months remuneration following his finding that the applicant was unfairly terminated. He maintained that, the minimum requirement for compensation in cases of unfair termination is twelve months remuneration as provided for under section 40(1)(c) of the **Employment and Labour Relations Act** [Cap 366 R.E 2019] and not otherwise.

In response, the learned counsel for the respondent submitted that the arbitrator misdirected herself and favoured the applicant who deserved nothing because her termination was fair enough. He maintained that, the arbitrator used sympathy in her decision by providing compensation while the applicant had been paid all dues accordingly. He maintained that, the arbitrator was not obliged to follow section 40(1)(c) of the Employment and Labour Relations Act to award the relief sought. To support his argument, he referred the Court to the case of **Hotel and**

Lodges (T) Limited Vs Attorney General & Another Civil Appeal No. 27 of 2013 CAT (unreported).

From the submissions and records of this application, it appears to this Court that the only question for determination is whether the CMA award of six months' compensation was legally procured.

Both the applicant and respondent raised an issue in respect of section 40(1)(c) of the **Employment and Labour Relations Act** [Cap 366 R.E 2019] by probing on whether the arbitrator was required to invoke the requirement of that section or not. I will let the cited section speak for itself. It provides that:

"40.-(1) Where an arbitrator or Labour Court finds a termination is unfair, the arbitrator or Court may order the employer –

(a) to reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination; or

(b) to re-engage the employee on any terms that the arbitrator or Court may decide; or

(c) to pay compensation to the employee of not less than twelve months remuneration".

Based on the cited provision, it is clear that where the arbitrator decides to award compensation in terms of subsection 1(c) above, the

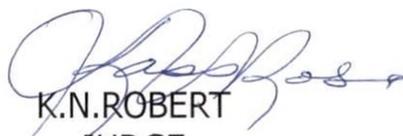
cited provision gives him discretion to award any compensation which is not less than 12 months remuneration provided that he has justifiable grounds for doing so, such as the grounds detailed under rule 32 (5) (a) to (f) of the GN No. 67/2007. However, in the present case the learned arbitrator seemed to have rambled in the wrong path when he ordered the compensation of six months without regard to the prescribed minima compensation.

Considering that the applicant's termination was both procedurally and substantively unfair, the arbitrator's order for compensation could reflect the prescribed minima compensation and the circumstances of the termination. The applicant worked with the respondent for five years (See certificate of service Exh. P2) and there was no proof of offence committed by her to warrant her termination. In the circumstances, this Court finds the compensation of six months remuneration to the applicant to be untenable and inappropriate.

As a consequence, I find merit in this application and proceed to allow it. I hereby set aside the award of compensation for six months remuneration and substitute it with twelve months remuneration.

It is so ordered.




K.N.ROBERT
JUDGE
5/8/2022