

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
LABOUR DIVISION SHINYANGA**

**AT SHINYANGA**

**LABOUR REVISION NO. 59 OF 2021**

*(Originated from an award of the Commission for Mediation and Arbitration of Shinyanga  
CMA/SHY/83/2020 dated the 15<sup>th</sup> Sept, 2020)*

**ATHANAS JOESPH KANUTI..... APPLICANT  
HEZRON JOHN HEZRON..... APPLICANT  
ISACK RAMADHANI..... APPLICANT**

**VERSUS**

**FRESHO INVESTMENT CO LTD..... RESPONDENT**

**JUDGMENT**

*12<sup>th</sup> May & 3<sup>rd</sup> June 2022*

**MKWIZU, J.:**

Applicants were under different capacity employed by the respondent on a short-term contract. They were notified of the expiration of their employment tenure on 24/3/2020. They were not happy with the said notification thus lodged at the Commission for Mediation and Arbitration Labour Dispute No. CMA/SHY/83/2020 dated 15/9/2020 claiming inter alia for reinstatement, unpaid leave, severance pay, overtime payment and compensation for breach of employment contract. The Applicant were at the end of the hearing by the Commission awarded leave allowances and the rest of the claims were found unproven.

Disgruntled, applicants have approached this court with a revision application predicated under section 91 (1) (2) (b) 4 (a) (b) and 94 (1)

(b) (i) of the Employment and Labour Relations Act, No. 6/2004 as amended and Rule 24(1) (a) of Labour Court Rules GN No. 106 2007 and Rule 29 of the Labour Institution ( Mediation and Arbitration) GN No 64 2007 supported by an affidavit moving this court to call for the records, revise and set aside the arbitration Award named above .

When the matter came for hearing on 12/5/2022, applicants were all in person present in court while the respondent had the services of Mr. Deus Richard learned advocate. Presenting their issues before the court, applicants said the CMA failed to consider their claim for weekly allowances, overtime payment, notice pay, housing allowance, severance allowance, transport allowance. They blamed the Arbitrator for concluding that the extra duty allowance was not indicated in the CMA Form No 1 while they had so indicated.

In response to the applicant's application, Mr Deus admitted that Applicants were employed by the respondent in a short-term basis contract covering only cotton season period as evidence in their letters of employment tendered in court as exhibits. Mr Deus contended further that; the contract could only be extended where the season extend beyond the agreed period. He said, the applicants were served with the end of the season notice on 24/3/2020.

Submitting on allowances claim, Mr Deus said is weekly allowance claim is baseless as applicants were paid the same. Food and housing allowance were not contractual nor the duty of the employer, notice pay is not applicable under their contracts as they were not terminated but notified

of the end of the season period. He supported the CMA's award elaborating that the respondent has already executed it to the fullest.

In their rejoinder, applicant conceded that the nature of their employment was that of a short-term bases but insisted that they were not paid their dues.

I have considered parties submissions and the records. In its decision, the arbitrator was of the view that the right to severance allowance is not available to an employee on a short term contract under the provisions of section 42(1) and 41(5) of the Employment and Labour Relations Act. The Housing and transport allowance was refused for it was not contractual while the overtime claim was also found baseless for not having being claimed in the CMA Form No. 1 by the applicants.

I will evaluate one claim after the other. Starting with severance allowance, it is the position of the law that, for one to be entitled for severance pay, the employee must be in a continues employment with his employer for a complete year up to a maximum of ten years. This is provided for under section 42 (2) and (2) of the ELRA :

*42.-(1) For the purposes of this section, "severance pay" means an amount at least equal to 7 days' basic wage for each completed year of continuous service with that employer up to a maximum of ten years.*

*(2) An employer shall pay severance pay on termination of employment if –*

*(a) the employee has completed 12 months continuous service with an employer; and*

The applicants here agree that they were employed in a short term contract and according to the evidence tended before the Commission, the applicant 's last contract with the respondent began on 01/01/2020 to 24/3/2020 meaning that it was a contract of three months period . Even assuming as explained by the applicants in their opening statements that their last assignment began in 1/7/2019,the said contract did not extend to 12 months required by the law as it ended on 23/3/3020. That being the case, they are automatically not entitled to severance pay. The Arbitrator was therefor well guided and his decision on the severance pay was justified.

The notice pay is also an issue to be determined by the nature of the termination of employment. According to the applicants themselves, their employment was on a seasonal basis and that their contract would end at the end of the cotton season by a notice by the employer. In terms of the records, the applicant's employment came to and end after the notice served on them on 24/3/2020 notifying the applicants of the coming to an end of the cotton season. It was not a termination notice envisaged by section 41 of the ELRA but end of the contract notice. The arbitrator was therefore justified in rejecting this claim.

Next is housing and transport allowance. I have taken trouble to read the applicants evidence before the Commission. I have failed to find the bases upon which this claim is predicated. There was nothing in their CMA Form No 1 reflecting the claim for transport allowance. It was only aurged during the hearing. Though the housing Allowance issue did feature in the applicant's claims forms, the arbitrator found it unclaimable for it was not

contractual. I share the same view. There is no evidence tendered by either party showing if the employer was duty bound to pay the applicants the claimed allowance. The complaint is therefore unmerited.

Lastly is the overtime claim which the arbitrator said it was not party of the applicant's CMA Form No 1. I have perused the applicants Claim forms. They all itemised overtime claim as part of their claims at the CMA, and therefore the arbitrator's observation was wrong. The important question here is whether applicants are entitled to the claimed payments or not. According to their employment contracts, applicants' hours of work were nine (9) from 7.30 to 16.30 six days a week and any extra hour would be payable only after an agreement between the employer and the employee. This is as per item 7 of the party's agreement. Meaning that to establish this claim, applicant ought to have proved two things, one, the existence of the agreement with the employer on the extra working hours and secondly that he did work the said hours. Apart from the list attached to the applicants opening statement listing the number of hours worked and its value, there was no evidence adduced by the parties establishing the said claim.

It is an elementary principle that overtime claims must be proved and must be claimed at the end of each month when and as they accrue. This was stated in the case of **Omary Mwinyimvua na Wenzake V. M/S Sengo** 2000 (T) Ltd Revision No.157 of 200 and **Masoud Kondo & 3 Others versus Tanganyika investment Oil Transport**, LCCD 1 2011-2012 Case No. 17. I find justification on the arbitrators decision for there is no evidence upon which the applicants overtime claim could be granted.

To that end, the revision by the applicants is dismissed for want of merit.  
Being a labour matter, I make no order as to costs.

**DATED at SHINYANGA this 3<sup>rd</sup> day of June , 2022.**



*E. Y. Mkwizu*  
**E. Y. MKWIZU**  
**JUDGE**  
**03/06/2022**

**COURT:** Right of appeal explained.

*E. Y. Mkwizu*  
**E. Y. MKWIZU**  
**JUDGE**