

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LABOUR DIVISION)**

**AT SHINYANGA**

**LABOUR REVISION NO. 8 OF 2021**

*(Arising from the Ruling dated the 08<sup>th</sup> day of February, 2021 of the CMA complaint  
referenced CMA/SHY/191/2018)*

**SHINYANGA MUNICIPAL COUNCIL..... APPLICANT**

**VERSUS**

**ESTER HILU..... RESPONDENT**

**JUDGMENT**

19<sup>th</sup> & 26 September 2022

**L. HEMED, J**

On 18/10/2001 **SHINYANGA MUNICIPAL COUNCIL**, the Applicant, entered into a three months renewable employment contract with the respondent, **ESTER HILU who** has been serving as health attendant (*Mhudumu wa afya*) to date. On 29/8/2018, she instituted at the Commission for Mediation and Arbitration (CMA), a labour dispute CMA/SHY/191/2018, against **SHINYANGA MUNICIPAL**, complaining that

she has never been confirmed into employment since 18/10/2001. She thus sought for an order for confirmation into employment and recognition of her employment rights.

The matter was determined by CMA and delivered its Award on 13/02/2020 by one Magreth A.D. Kiwara, Arbitrator, awarding the respondent a sum of Tshs 2,575,500/= (Tshs.2,040,000/=leave pay for 17 years and Tshs.535,500/= severance pay). She got dissatisfied with the Award and successfully applied in this Court for revision of the said Award vide Labour Revision No.10 of 2020. This Court, Hon. Mkwizu, J, found that CMA had dealt with uncontested matters between the parties leaving contested matters undecided occasioning injustice to the parties. She thus quashed the Award and further remitted the record to the CMA with directives that a fresh ruling be composed and delivered to parties in accordance with the law.

On 8<sup>th</sup> February 2021, CMA delivered another award making orders that the Respondent herein be confirmed to her employment and be allowed to retire from employment after having served for 20years. It was also ordered she should be paid Tshs. 12,000,000/= as leave pay for 20 years;

Tshs.2,800,000/= as severance pay; and Tshs.72,000,000/=for arrears of salary, totaling to **Tshs. 86,800,000/=**.

The said second Award irritated **SHINYANGA MUNICIPAL COUNCIL** who knocked the gates of this Court seeking to challenge the said Award, hence the present Labor Revision where this Court is asked to call for and examine, revise the records, proceedings and award dated the 08<sup>th</sup> day of February, 2021 in Labour dispute referenced as CMA/SHY/191/2018 and satisfy itself as to its correctness, legality, regularity and propriety of the Award.

The matter was argued orally on the 19<sup>th</sup> September 2022. The Applicant was represented by Mr. Musa Mpogole, State Attorney while the respondent was represented by mr. Frank Samwel, leaned advocate. Grounds under which parties based their arguments are: that CMA received and determined SHY/191/2018 against non-existing entity; CMA declaring the respondent permanent employee by assuming that the contract for specific period changed to unspecified period; and CMA failure to comply with the directives of the High Court in Labour Revision No.10 of 2020.

Mr. Mpogole submitted in respect of the 1<sup>st</sup> ground that the arbitrator erred to receive and determine SHY/191/2018 while knowing that the Respondent had lodged a case against the non-existing entity, Shinyanga Municipal. According to Mr. mpogole, the anomaly is fundamental because even the Award cannot be executed. He cited the High Court decision in the case of Charles **Luhaja Sumayi vs Shinyanga Municipality** Labour Revision No.19/2020. He also cited the Court of Appeal Decision in the case of **Ilela Village Council vs Ansaar Musilim Youth Centre, Civil Appeal No.317 of 2019.**

With regard to the 2<sup>nd</sup> ground, Mr. Mpogole asserted that the arbitrator erred to order that the respondent be confirmed and she be given all other entitlements as a permanent employee by assuming that the Respondent's contract for specific period changed to unspecified period contract. To fortify his point, he cited the decision of this **Court in Abel Kikoti and 5 others vs Tropical Contractors Ltd Labour** Revision No.305 of 2019.

Regarding the 3<sup>rd</sup> ground, the learned state attorney submitted that the arbitrator awarded the respondent the sum of Tshs 86,800,000/= from the following break down; Tshs.12,000,000/=leave allowance for 18 years; Tshs.2,800,000/= being severance pay; and Tshs.72,000,000/= arrears of

salary for 18 years. Mr. Mpogole argued that the arbitrator misdirected himself by awarding the said amount to the respondent who is working for the appellant as casual labourer.

As to the 4<sup>th</sup> ground, Mr. Mpogole submitted that the arbitrator did not comply with the directives of this Court (Hon.Mkwizu, J) made in Labour Revision No.10 of 2020 dated 5<sup>th</sup> October,2020. It was submitted that the Court had directed that fresh Award be composed after narrowing down the issues, surprisingly, the arbitrator relied on issues which were not the centre of the dispute. He insisted that the Act of arbitrator not to frame issues and raising his own issues is contrary to Reg.22 (2) of the Labour Institutions (Mediation and Arbitration Guidance) Rules, GN.No.67 of 2007 which requires that at the conclusion of opening statement the Arbitrator has to narrow down issues, evidence, arguments and explain to the parties the purposes of doing so. He stated that failure to frame issues resulted into wrong Award. He asked this Court to nullify an award.

In reply thereof, Mr. Samwel who submitted for on behalf of the respondent argued in respect to ground one that the Shinyanga Municipal were served and appeared before CMA and defended the case. He asked this Court to evoke the overriding objective principle to ignore such error and

concentrate to determine substantive justice. He argued that parties to the matter at hand cannot be prejudiced by the use of the name Shinyanga Municipal. He told the Court that the applicants Shinyanga Municipal Council, recognizes the award that is why they have appeared to challenge it.

Regarding ground No.2, he argued that the respondent does not fall in the category of either contract for specified period of contract for specified task because she is not a professional. He cited the case of **Abel Kikoti & 5 others** (*supra*) in fortifying his argument that the respondent falls under unspecified period contract.

With regard to the 3<sup>rd</sup> ground, Mr. Samwel submitted that the respondents claims before CMA was on confirmation into her service, retirement, certificate of service and retirement benefits and not on unfair termination because the respondent is still working for the Applicants. In a way he conceded that the Arbitrator while composing Award delivered on 8/02/2021 he repeated the errors of the first Award contrary to the directives of the Court. Mr. Samwel stated that they applied for review where on 7/5/2021 another award was supplied to the Respondent.

Mr. Samwel submitted to oppose ground 4 that the reviewed Award dated 7/5/2021 considered all the directives of this Court in Revision No.10 of 2020. He thus prayed this Court to Confirm the Award of CMA. In his rejoinder submissions, Mr. Mpogole repeated what he made in his submissions in chief. With regard to the Award dated 7/5/2022, he said that it is not known to the Applicant as they were never notified about the process to review it.

Having heard the submissions either in support or to counter the application, I now turn to determine the Application. It was argued on ground one that the matter before CMA, in SHY/191/2018 was against none existing entity in the name of SHINYANGA MUNICIPAL. I have perused the record of CMA, the Award dated 13<sup>th</sup> February 2020 and that of 8<sup>th</sup> February 2021 and have found that the respondent at all the material time was referred to as **SHINYANGA MUNICIPAL**. If at all the Respondent in this matter intended to institute proceedings against Shinyanga Urban Authority, she ought to have complained against **SHINYANGA MUNICIPAL COUNCIL** as per certificate of establishment.

Shinyanga Municipal Council is a legal entity under sections 8 and 9 of the Local Government (Urban Authorities) Act, Cap.288 which can sue and

be sued on her own name. the Applicant in this matter filed her complaint before CMA against Shinyanga Municipality which is a different entity without force of law. Shinyanga Municipality has neither a right to sue nor capacity of being sued.

The question that arises is whether it is fatal. In the face of it, it appears to be a minor error, however, in my firm opinion it is fatal because any award emanating from the proceedings against non-existing entity/person cannot be executed. This means that the holder of the award/decreed will remain with a hollow award. The question of fatality of suing a non-existing entity/person was also discussed in the case of **Ilela Village Council vs Ansaar Muslim Youth Centre**, Civil Appeal No.317/2019 (Unreported) where the Court of Appeal of Tanzania held that the act of suing the respondent entity which did not exist was fatal and thus ordered the proceedings of the lower court a nullity.

I have also noted that this Court in Labour Revision No.10 of 2020, **Ester Hilu Vs Shinyanga Municipality**, Mkwizu, J, had directed that a fresh ruling be composed and deliver to parties in accordance with the law, following the findings that CMA had dealt with uncontested matters between the parties leaving contested matters undecided. I have examined the Award



dated 8<sup>th</sup> February 2021 and found it containing the following issues for determination: -

1. *Endapo kulikuwa na sababu ya msingi ya kuachishwa kazi (whether there was reason for termination)*
2. *Endapo utaratibu wakumwachisha kazi ulifuatwa. (whether the procedure for termination was adhered to)*
3. *Nini stahiki ya kila upande. (To what reliefs are the parties entitled)*

The above issues are not related to the dispute before CMA, where, the Respondent who is still working as casual labourer of SHINYANGA MUNICIPAL COUNCIL was seeking for the assistance of CMA to be confirmed to her employment. There was no question of termination from employment. In the circumstance, it is quite clear that the arbitrator did not heed to the directives of this Court made in Labour Revision No.10 of 2020.

From the foregoing, the grounds of suing a non-existing entity and failure to comply with the previous directives of this Court suffice to dispose of the Application at hand. The Application for Revision is thus allowed to the extent that proceedings in CMA/SHY/191/2018 and all awards made thereof including the one dated 8<sup>th</sup> February,2021 are quashed. In the

interests of justice, I direct redetermination of the matter between proper parties before another arbitrator. No order as to costs.

**DATED at SHINYANGA** this 26<sup>th</sup> day of September, 2022

  
**L.Hemed**  
**JUDGE**

**COURT:**

Judgment is delivered in the presence of Mr. Mussa Mpogole for the Applicant and Mr. Frank Samwel for the Respondent.

Right of Appeal Explained.



  
**L.Hemed**  
**JUDGE**  
**26 /09/202**