

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**[IN THE DISTRICT REGISTRY OF ARUSHA]**

**AT ARUSHA**

**REVISION APPLICATION NO. 103 OF 2021**

*( C/F Dispute Number CMA/ARS/ARS/12/20)*

**JONAS AMON LOTA.....APPLICANT**

**VERSUS**

**NEW LIFE OUTREACH.....RESPONDENT**

**JUDGEMENT**

*29<sup>th</sup> September & 5<sup>th</sup> October 2022*

**KOMBA, J**

The applicant was an employee of the respondent. The relationship between the two ended on 5<sup>th</sup> Day of October 2019 when the applicant instituted a dispute to Commission of Mediation and Arbitration (CMA) for unfair termination. This happened after he has received a letter instructing him to hand over the office to a newly recruited staff. Aggrieved by that decision of management, the applicant lodged Labour Dispute (C/F Dispute Number CMA/ARS/ARS/12/20) at the CMA claiming that-

1. Respondent terminate the applicant and the reason for termination being that respondent intends to employ a lawyer to take applicant's position.
2. After termination of the employment the respondent did not pay final dues to the applicant as required by law.

*NK*

3. It is the applicants' believe that the termination exercise was unfair substantively and procedurally and that it was not done in accordance with the labour laws.

In a nutshell the applicant was employee of respondent, a pastor, Acting Human Resource Officer, Board Member and Vice Chairperson. In normal running of their office management discover that they need a Lawyer so as to run employment affairs as the applicant was overwhelm with responsibilities. In one of the Bord Meeting which was conducted on 11/06/2019 (Exhibit P4) it was deliberated to employ a lawyer whose duty among others will be to deal with contracts and manage employees. Applicant being a Board member he attended the said meeting. Later Board implemented his decision by employing a new staff who among the duties is supposed to manage Employees. That being the case, applicant was given a letter dated 8<sup>th</sup> October 2019 informing him that new officer is in place and that applicant should handle the office between the specified date. As stated, he files the dispute to CMA on 5<sup>th</sup> October, 2019 claiming a total of 83,625,666.00 and certificate of services. Respondent continue to pay him salary till February 2020 (Exhibit PW3) when they stop for reasons of existence of labour dispute. When the dispute was solved, the CMA issued an award in favour of the respondent that there was no unfair termination

and that applicant should report back to work. Aggrieved by the decision of CMA he file this revision praying this court to revise, set aside and quash the arbitrators award in Labor Dispute No. C/F Dispute Number CMA/ARS/ARS/12/20.

When the revision was up for hearing on 29 September, 2022 the applicant was represented by Ms. Vanessa Nyanga and Ms. Rose Mwaimu both Advocates while the respondent was represented by Mr. Julius Karata, Advocate and was oral submission.

During hearing Ms. Vanesa upon adopting affidavit of applicant she said the termination was supported by exhibit P1 whereas the applicant was addressed as Human Resource Officer, it's our submission that CMA was improper for failure to consider that the applicant was terminated as Human Resource Officer without re-assignment of any other role within the organization. She said in the Boarding meeting (P4) which was conducted in 11/06/2019 was agreed to find a lawyer and not a human resource officer. she further informed the court that new Human Resource Officer appeared before CMA one Nasoro and introduced himself as Human Resource Officer and that Respondents witness failed to prove that the new Human Resource Officer is in fact a lawyer and insisting that applicant position was unfairly grabbed from him. She further said that respondent contravenes Section 37

of ELRA R.E. 2019 which demand for valid reasons and fair procedures. Finally, she prays the court to revise, set aside and quash arbitrators award in labour Dispute No. CMA/ARS/ARS/12/20 of 24<sup>th</sup> September, 2021 and other relief through form CMA form No. 1.

In contrary Mr. Karata said that applicant filed a labour dispute alleging he was terminated unfairly while respondent alleged that applicant terminated himself from work. It is from that background the fundamental issue was whether the applicant was terminated or not. He further said the dispute now the applicant was required to prove his termination. When he tries to prove his termination, he tendered exhibit P1 which is a letter dated 08/10/2019. The letter refers a Boars meeting which he was a member and vice chairman so he was aware of the decision of the Board. He said he was assign many other duties not only the HRO, besides applicant failed to prove that he was employed as HRO. One of his witnesses DW2 informed the Commission that applicant was not terminated. Mr. Karata said to prove the good will of respondent (employer), they continue to pay him salary four months then they terminated because the dispute was in progress in CMA (Exhibit P2 and P3). Mr. Karata prays that award of CMA be upheld.



Upon hearing both parties, and thorough read the record from CMA, the issue to be determined is whether the applicant was terminated. If the answer is in affirmative then was it unfair?

The applicant is praying this court to examine record of CMA award and seeking revision, set aside and quash the same for incorrectness and illegality if at all will be proved. I warned my self whether this court has jurisdiction to entertain such prayers and find the following provisions under Employment and Labour Relations Act, CAP 336 R.E.2019 thuds

*Section 40-(1) Any party to an arbitration award made under section 88(10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-*

*(a)*

*(b)*

*(2) The Labour Court may set aside an arbitration award made under this Act on grounds that-*

*(a) there was a misconduct on the part of the arbitrator;*

*(b) the award was improperly procured;*

*(c) the award is unlawful, illogical or irrational.*

Upon satisfaction that the court has jurisdiction from the above quoted provision I now turn to the issue at hand. It is a custom and principle in legal regime that a person who allege must prove the existence of what he is



alleging. This was inline with section 110 and 112 of The Law of Evidence Act, [CAP 6 R.E 2019] thus-

*110.-(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

*(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

*S. 112 The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence.....*

Applicant while supporting his allegation of unlawful termination tender in the Commission Exhibit P1 which is a letter dated 08/10/2019 informing him of completion of recruitment of HRO, the letter was addressed to him as *Afisa Mwajiri* (HR) and the content it explains that..... '*kwa kuwa bodi ilikupa jukumu la kusimamia rasilimali watu kwa kipindi cha mpito...*' that means that applicant was acting HR on transit while waiting for permanent officer to be employed. The letter, which is the only exhibit tendered with regard to this allegation, carries a message that the vacant post is now filled. Applicant in his interpretation he said he was not assigned with a new duty hence found himself redundant. That assumption is reverted because the respondent continues paying him salary, that was evidence that applicant was not terminated and there are duties which he was supposed to perform

that's why his name was nor removed from the payroll of the respondent. Relying on Exhibit P1 the applicant fails to prove that he was terminated as provided in section 112 of CAP 6. This section has been amplified in various decision including that **of Salum Muya & Others vs District Executive Director, Kibaha District Council & Another** (Land Case 131 of 2012) [2018] TZHCLandD 10 (27 February 2018); **Airtel Tanzania Ltd vs Majura Matage T/a Majura General Suppliers** (Civil Appeal 60 of 2017) [2020] TZHC 829 (17 April 2020); **C.R.J Construction Co. Ltd v. Maneno Ndaliye & Another**, Rev.No.205/2015.

In the circumstances of this matter, the applicant failed to justify his claim that he was terminated by the respondent. On that regard, I find no reason to interfere the CMA's Award, I thus uphold the same.

Application for revision is dismissed for want of merits.



  
**M.L. KOMBA**

**JUDGE**

**05/10/2022**

