

**IN THE HIGH COURT OF TANZANIA
(LABOUR COURT DIVISION)
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

LABOUR REVISION NO. 23 OF 2021

**MIFUMBI SECONDARY SCHOOL.....APPLICANT
VERSUS**

**BERNARD MARCO
EMMANUEL MAJANI
BASILISA IKUKU
SALU SAGUYI
ANNA MPAKI
SIPORA JIBU
BORIUS NTANDU**

.....**RESPONDENTS**

(Arising from the Award of the Commission for Mediation and Arbitration,
Singida, A.Massay-Arbitrator)
Dated 9th of June, 2021
In
CMA/SGD/IKG/05/2020
.....

JUDGMENT

**27thJuly&30thSeptember,2022
MDEMU, J.:**

This is an application for revision in which the Applicant Mifumbi Secondary School, through notice of application and chamber summons supported by the affidavit of Inhard E. Mushongi, moved this court to call for and examine the award of the Commission for Mediation and Arbitration (the CMA) for Singida dated the 9th of June, 2021. According to the affidavit, the Respondents were employee of the Applicant. In that

employer–employee relationship, the Applicant breached terms of employment contract by not paying salaries to the Respondents to the tune of Tshs.77,907,000/= as per F1 and paragraph 2 of the Applicant's affidavit. At the conclusion of this labour dispute, the CMA Singida determined in favour of the Respondents and ordered be paid salary arrears as hereunder: Bernard Marco Tshs.7,108,000/=; Emmanuel Majani Tshs.11,187,000/=; Basilisa Ikuku Tshs.14,842,000/=; Salu Saguyi Tshs.1,658,000/=; Anna Mpaki Tshs.3,943,000/=; Spora Jibu Tshs.6.163,000/= and Borgius Ntandu Tshs.33,000,000/=. As said, this was on 9th of June, 2021. Aggrieved, the Applicant moved this court to revise the award on the following grounds as per paragraph 7 of the affidavit that:

- a) Whether it was proper for the Commission to award salary arrears to some of the Respondents who did not testify during arbitration to prove their allegation.*
- b) Whether the amount awarded by the Commission for Mediation and Arbitration to the Respondent was proved by evidence as required by the law.*
- c) Whether the Commission for Mediation and Arbitration did have jurisdiction to entertain the time barred matter.*

- d) Whether the Respondent sued the proper person in the Commission for Mediation and Arbitration.*
- e) Whether the denial by some of the Respondent to corporate in auditing processes can benefit the Respondent.*
- f) Whether Mr. Borgius Ntandu who was awarded 33 million tshs is entitled to such amount of money.*
- g) Whether the Commission awarded proper relief as prayed by the Respondent.*

On 27th of July, 2022, appeared before me Mr. Inhard Mushongi, Advocate for the Applicant and Mr. Peter Ndimbo, Advocate for the Respondents arguing the application. In support of the application, Mr. Mushongi made some corrections to the notice of application and chamber summons to read Singida instead of Mwanza. He thereafter asked this court to adopt his affidavit in support of the application as part of his submissions.

He complained in ground 7 (a) of the affidavit that, the award incorporated Respondents who were not a part to the dispute filed to the CMA because only 3 Respondents, that is, Bernard Marco (PW1), Borgius Ntandu (PW3) and Anna Joseph Mpaki (PW2) who testified to prove their claim. In his view, there was therefore no evidence to justify award to

those who did not testify. As this is a similar understanding in ground 7 (b), he thus abandoned it accordingly.

Submitting in ground 7(c), the CMA entertained this labor dispute while time barred. According to CMA F1 and attachments, dispute on breach of contract should be filed within thirty (30) days. He added that, in evidence (P2 and P6) dated 28th of January, 2020 the Respondents were terminated on 2nd of January, 2020 while the dispute to the CMA was filed on 6th of March, 2020. This, in his view, was out of the prescribed time limit as stated in **Hector Sequeira vs. Serengeti Breweries Ltd, Labour Dispute No. 26/2009, Labour Court Cases Digest, 2011-12** at page **56**. He added that, according to Regulation 10 (2) of GN. No. 64 of 2007 requiring claims not related to unfair termination to be filed within sixty (60) days, a dispute filed on 6th of March, 2020 challenging breach of contracts registered on 2nd of January, 2020 is well beyond sixty days prescribed. He cited the case of **PEEPEE TZ Ltd vs. Shaban Juma Omary, Rev. No. 33/2013- Labour Court Cases Digest 2015**, page **26** to bolster his assertion.

In ground 7(d), the leaned counsel argued that, this labour dispute was filed against Mifumbi Secondary School Ltd. but the evidence, including the certificate of registration, there is nothing like Mifumbi

Secondary School Ltd. It was therefore wrong to file a dispute against the company which never owned the School. He submitted further in ground 7(e) that according to the evidence of DW2, the Respondents prevented the auditing and therefore the CMA erred in allowing the Respondents to benefit from their own wrong.

Submitting in ground 7(f), the award of 33 million to Bojius Ntandu was unjustified for he was a general supervisor of the School, shareholder, signatory/ authorizing officer and replied to complaints letter of which he was among the complainants. He concluded in ground 7(g) that, as breach of contract is part of unfair termination, reliefs were to be awarded under section 40(1)(c) of Employment and Labour Relations Act, Cap. 366 which are reinstatement, re-engagement and compensation. Award of salary arrears as in this case was illegal. He finally urged me to dismiss the dispute as was filed out of time.

In reply, Mr. Peter Ndimbo submitted in ground 7(a) that it was not wrong to award salary arrears to Respondents who did not testify because, the complaint was similar and there was consensus between the complainants, Respondent and the Arbitrator for others for themselves and on behalf of others. As to time limitation complained in ground 7(c), his view was that, the dispute on breach of contract was in time as the Respondents were terminated on 18th of February, 2020 whereas the

application was filed on 1st of March, 2020. It was therefore within 60 days. He added further that, in principle, the Respondents were not terminated but the Applicant transferred all students on 18th of February, 2020 hence, the dispute arose.

Replying to ground 7(d), his view was that, the Respondents as per CMA F1 sued the Employer Mifumbi Secondary School and not Mifumbi Secondary School Ltd. He was therefore the proper person. Regarding preventing audit complained in ground 7(e), the Respondents' contractual terms were to teach and not responsible on audit issues. This was the duty of the Applicant, the learned counsel added.

Submitting in ground 7(f), the learned counsel stated that, the award of 33 million was justified because Mr. Borgius Ntandu much as was a shareholder, he was also employed by the Applicant. The claim of 33 million Tanzanian shillings was thus proved. The learned counsel found no fault in ground 7(g) because reliefs in the CMA F1 are what was awarded, that is salary arrears. He concluded that, Section 27(1) of Cap. 366 was complied because the award was the fruit of the Respondents performance. He thus thought the application lacks merits and urged me to dismissed.

In rejoinder, Mr. Mushongi submitted briefly that, as the Respondents were employed on different time and paid different salary

then each was supposed to prove his claim. He rejoined on time limitation that CMA F1 was received on 6/3/2020 and not 1/3/2020, thus out of time.

This is what parties submitted. I should begin with the issue of time limitation complained in ground 7(c) of the affidavit. This answers one question as to when the alleged employment contract, if any, was breached? There are two competing versions between the Applicant and the Respondents' counsels. The Applicant says the dispute was time barred because the date of breach of contract was on 28th of January, 2020 as per letters on entitlements claim (P2 and P6) dated back to 2/1/2020. Going to his shoes, filing a labour dispute on 6th of March, 2020 was time barred. On his part, the Respondent's counsel claimed that, the breach was on 18th of February, 2020 the date when the Applicant transferred students.

I agree with the Respondents that, the dispute in the CMA was filed within time. The cause of action, that is breach of contract is dated back to 18th of February, 2020 when the Applicant transferred students to another school. Reasons for the transfer is stated partly in exhibit D3, a letter with Ref. No.IDC/E/35/14 *Kuhamisha Wanafunzi Toka Shuleni Kwako Baada ya Kushindwa Kutatua Migogoro ya Uendeshaji wa Shule.*

Among the grounds for such transfer of students is salary arrears. Part of the said letter reads as hereunder:

2. Ikumbukwe kwamba kumekuwepo na migogoro hapo shuleni isiyopatiwa ufumbuzi kwa muda mrefu ambayo tumekuwa tukijitahidi kutoa maelekezo ili kupata suluhu.

Migogoro hiyo ni pamoja na kutokulipa wafanyakazi, hasa walimu mishahara na stahiki zao wanazodai takribani Tshs. 83,894,000.00

(emphasis supplied)

Given that stance, the Respondents had unpaid salary claims against the Applicant which had lasted for quite some time. Nevertheless, they proceeded executing terms of employment contract through teaching. As they were employed for teaching, the act of the Applicant employer to relocate students to another school technically meant the Respondent had no work to perform. In my view, here is when the cause of action, or breach of the employment contract commenced. Dates through which salary arrears started accruing in the circumstances of this labour dispute, may not be taken as the date for termination of contract of employment.

As alluded above, claims of salary arrears commenced prior to the filing of this labour dispute and in fact, that was one of the reasons

towards transfer of students. As students were transferred effective from 19th of February, 2020, labour dispute filed to CMA on 1st of March, 2020 was well within time limit. This ground is accordingly dismissed.

Now to the ground of complaint that the claims were not proved. According to CMA F1, one Edward Marco signed the form in person. The rest of the Respondents did not. Annexed to CMA F1 is names of other Respondents indicating what each is claiming. The tittle to attachment list reads: *WALIMU WOTE SITA (6) TUMEMTEUA BERNARD DONKOL MARCO KUWA MUWAKILISHI WA WALIMU ATAKAYEPOKEA NA KUSAINI NYARAKA ZINAZOHUSIANA NA USULUHISHI KATIKA IDARA YA KAZI*. This tittle, in express terms, is straight forward that, Mr. Marco's responsibility on behalf of other Respondents was to receive and sign documents relating to labour dispute filed to the CMA. This was all about.

In that foregoing, whether on instructions or otherwise, and save for representative suit, there is no law where person may testify on behalf of the other. Rule 44(2) of the Labour Court Rules was to be complied if parties wanted to file a representative suit. The Rule provide as follows: -

"Where there are numerous persons having the same interest in a suit, one or more of such persons may, with the permission of the Court appear and be heard or defend in such dispute, on behalf of or for the benefit of all persons so interested, except that the Court shall, in such case give at the complaint's expenses, notice of the institution of the suit

to all such persons either by personal service or where it is from the number of persons or any other service reasonably practicable, by public advertisement or otherwise, as the Court in each case may direct."

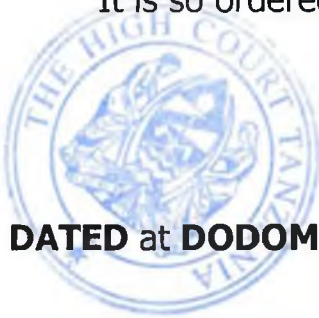
This was the position in the case of **Ally Kibonde and 22 Others vs. Habitat Building Services Limited, Revision No. 520 of 2017- Labour Court Digest 2018** at page **15**, where it was held that: -

"As regards to the second point of objection I do not want to exercise my mind too much as it is also clear that, the Applicants conceded that no leave was granted to Mr. Ally Kibonde to file this application as a representative under Rule 44(2) of the Labour Court Rules. In view of the above position of the law, it is clear that leave in question does not apply automatically in this Court, so the Court cannot anticipate all 23 Applicants have the intention to proceed in this Revision without Court leave".

As seen in the proceedings of the CMA from page 2 through page 16, Borgius Andrew Ntandu, Anna J. Mpaki, and Benard Marco testified on their behalf each, no leave was sought and granted to them to file application subject to this revision as a representative suit. Mere attachment of list of names and the amount claimed in CMA F1, may not be proof of the claim save for where is proved by way of evidence in the arbitration proceedings.

Since the irregularities in the manner the dispute was handled at CMA makes it difficult to determine which claim was proved and which was not, it may not be safe to conclude proof of claims for those testified and dismiss to those who did not testify. In that stance, the two grounds suffice to dispose the whole dispute. It is on those premises the proceedings and the resultant award is hereby nullified. It is further ordered that in case the Respondents are still interested to pursue their rights, may do so to the CMA in accordance with the law. Each party to bear own costs.

It is so ordered.



Gerson J. Mdemu

JUDGE

30/9/2022

DATED at DODOMA this 30th day of September, 2022



Gerson J. Mdemu

JUDGE

30/9/2022