IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LABOUR REVISION NO 06 OF 2022

(Arising from Labour Dispute No. CMA/KIG/190/2020/01)

OXFAM ..... APPLICANT

VERSUS

OMARY SELEMANI .....1ST RESPONDENT
ROBERT KAJORO ..... 2ND RESPONDENT
CASTORY BASEKA ..... 3RD RESPONDENT
WILLIAM JOHN .....4TH RESPONDENT
DAUSON NTUNZWE .....5TH RESPONDENT
JUMA GILIGILI ..... 6TH RESPONDENT
SANZE NTENDELI ..... 7TH RESPONDENT

JUDGMENT

12/9/2022 & 7/10/2022

L.M. Mlacha,J

The applicants, OXFAM, filed a revision against the decision of the commission for mediation and Arbitration for Kigoma (the CMA) made in CMA/KIG/190/2020/1. The application is supported by the affidavit of Rosemary Andrew Nyatega, a Principle Officer of the applicant. It is also accompanied by all the relevant documents from the CMA including the award (Tuzo). Seeking the following orders;

i) That the Honourable court be pleased to call for the records of the proceedings in the Commission for Mediation and Arbitration in

Labour Dispute No. CMA/KIG/190/2020/01, revise and set aside the decision of the Commission for Mediation and Arbitration dated 29th March 2022 and served upon the Applicant on 11th April 2022 being delivered by Hon. Lomayan Stephano Arbitrator.

ii) That the Honourauble court be pleased to grant costs of this application.

iii) That the Honourable Court be pleased to make such any other orders as it may deem fit and just to grant.

The respondents, Omary Selemani, Robert Kajoro, Castory Baseka, William John, Dauson Ntunzwe, Juma Giligili and Sanze Ntendeli opposed the revision. They filed a counter affidavit in opposition. Mr. Juventus Katikilo appeared for the applicant while Mr. Ignatus Kagashe represented the respondent.

To understand the issues involved in the revision clearly, a bit of the background may be useful. It is reproduced as follows. The respondents filed the case at CMA claiming unpaid salaries arising from salary differences, unfair termination and damages arising from unfair termination. They claimed to have been employed by the applicant from 2015 up to 2019 when their services were terminated. The CMA found that the respondents had

failed to prove non payment of salaries but managed to establish that they were employees of the applicant. It proceeded to hold that the reasons advanced by the applicant to justify the termination were not enough. It took the situation as a situation of unfair termination of employment and awarded payment of 12 months' salary at he salary of Tshs 634,000/= per month to each one them in the following breakdown: -

1. Omary Selemani Tshs 7,608,000/=

2. Robert Kajoro Tshs 7,608,000/=

3. Castory Baseka Tshs 7,608,000/=

4. William John Tshs 7,608,000/=

5. Dauson Ntuze Tshs 7,608,000/=

6. Juma Giligili Tshs 7,608,000/=

7. Senze Ntendele Tshs 7,608,000/=

Grand Total - Tshs 53,256,000/=

Aggrieved by the decision, the applicant is now seeking revision on the decision on the grounds of illegality of the decision of CMA. It was submitted for the applicant that the arbitrator misdirected himself in awarding Tshs

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53,256,000/= without sufficient evidence to prove the same. That, the claim was based on the salary of PW2 which was said to be Tshs. 634,000/= without proof that the rest of the employees earned the same salary. Counsel for the applicant proceeded to submit that the arbitrator neglected the evidence that the respondents were working on some days, let say 7 days and rest on the other 7 days or what was said by the applicant's witness that they worked for 7 or 14 days at a go and rest for a similar period. That, the arbitrator neglected the evidence showing that the applicants were casual employees. That they were being hired on daily basis and paid according to the number of days worked. He referred the court to **Godson Benard and 2 others v. Stanley Engineering Co. Ltd**, Revision No. 22 of 2020, section 61 of the Labour Institutions Act and section 4 of the Employment and Labour Relations Act on who is an employee. Referring on the case, he submitted that a casual employee is an employee whose duration of employment is a day as opposed to employees for indefinite duration and that termination of employment depends on the duration of his employment. He concluded that it is the terminarion of an indefinite duration contract which requires the employer to follow the procedure. He referred the court to **Franco Mbangwa & 241 others v. China Civil Engineering**

Construction Corporation, Evision No. 8 of 2018 where if was held that employees who are hired and paid on daily, weekly basis have their termination procedure under section 41(1) (b) (i) of the Employment and Labour Relations Act which is by payment of 4 days notice when such employment is discharged. He went on to submit that since the respondents were employed on daily basis they are not covered under the provisions of section 37 of the Employment and Labour Relations Act. It was therefore wrong to hold that there was no fair reason and procedure adopted in terminating the respondents. He went on to say that the 12 months salary which was awarded was against section 41 (1) (b) (i) of the Employment and Labour Relations Act. He proceeded to submit that the respondents were terminated in 2018 due to UNHCR's policies on hiring casual labourers. He said that the respondents were only hired to empower refuges who took over the duties there after. He referred the court to **Dronco Mbangwa & 241 others** (supra) where it was held that it was not proper to hold the employees while there was no work for them. He argued the court to revise and set aside the award of CMA.

Submitting in reply, the counsel for the respondents told the court that the respondents were employees of the applicant who rendered plumbering and

pump operation services at Nduta Refugees camp Kibondo. The relationship started in 2015 and ended in 2019 where their employment was terminated. They complained to various authorities and later to the CMA Kigoma. They lodged two reliefs; underpayment of salaries and statutory payment of Salaries for unfair terminational Tshs. 120,598,000/=. The CMA heard the case and was satified that the respondents were employees of the applicant and not casual employees as alleged. It could not see evidence on underpayment of salaries but found that their services had been unfairly terminated. Based on the finding for unfair termination, it awarded 12 months salaries making Tshs 7,608,000/= for each employee total Tshs 53,256,000/=, he said. Counsel submitted that this award was based on the evidence on records and thus justified. Making reference to section 4 of the Employment and Labour Relations Act and section 61 of the Labour Institutions Act he submitted that the respondents were employees of the respondents and thus entitled to notice of termination and fair termination. There was no such a thing hence the claim for unfair termination, he said.

Counsel for the applicant made a rejoinder submission and reiterated his earlier position.

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I had time to examine the evidence on records closely. I have also considered the submissions. The evidence adduced included the 'Oxfam GB statement of Terms and conditions of Employments (Exhibit D2), the CASUAL EMPLOYMENT FORM NDUTA REFUGEES CAMP' (Exhibit D1 collectively) and The Attendance Sheet – Casual Labour (Exhibit D1). The casual Employment forms have the records of payment. One of them reads as under:-

PAYMENT FOR: Skilled

			DATE				
NO	**Names**	**DESCRIPTION**	**FROM**	**TO**	**TOTAL DAY**	**AMOUNT PER DAY**	**TOTAL AMOUNT**
1.	Nsanze Ntendeli	Plumber	23/12/2016	5/12/2017	13	12,000	156,000
2.	Juma Giligili	Plumber	23/12/2016	5/12/2017	14	12,000	168,000
3.	Bimenyaimana Hamuri	Plumber	23/12/2016	5/12/2017	13	2500	32,500
4.	Ntagahoraho Donasiano	Plumber	23/12/2016	5/12/2017	14	2500	35,000
5.	Ntahokimaze Alon	Plumber	23/12/2016	5/12/2017	14	2500	35,000
						Total	**426,500**

The Daily Attendance sheet - casual Labour has a similar set up and a tick (√) for each day. It shows the daily attendance.

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Reading through the terms of employment, observing the manner in which the respondents attended and were being paid as reflated above, it is clear that the respondent were not employed on permanent basis but casual employees. Being casual employees, they had no right for the 30 days notice of termination as alleged by the counsel for the respondents. See **Wilbroad Nzelani v. Shaxi Construction Engineering & Mineral Co. Ltd,** (HC), Revision No. 112 of 2019 (M. Mnyukwa, J.).

It was therefore wrong to hold, as was done by the arbitrators, that they were terminated unfairly. Neither did failure to comply with the procedure of termination attract the payment of the 12 months' salary. What was done by the CMA was therefore, with respect, illegal and calls the exercise of the powers of this court by way of revision. It was wrong to find that the respondents were in an employment while the evidence show that they were engaged on daily basis and paid as casual employees. The decision of the CMA is thus revised, vacated and set aside. It is ordered so.

L.M. Mlacha

Judge

7/10/2022

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Court: Judgment delivered. Right of Appeal Explained.

L.M. Mlacha

Judge

7/10/2022

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