

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[LABOUR DIVISION]

AT ARUSHA

LABOUR REVISION No. 08 of 2022

(C/F LABOUR DISPUTE No. CMA/ARS/ARS/430/19/287/19)

ELIZA ALFRED.....1ST APPLICANT

MARY PAULO.....2ND APPLICANT

CATHERINE DANIEL ELIAS3RD APPLICANT

ELIA MWANGA.....4TH APPLICANT

NATALIA TIMOTH TEMU.....5TH APPLICANT

VERSUS

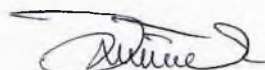
BANANA INVESTMENT LIMITED..... RESPONDENT

RULING

15th September & 20th October 2022

TIGANGA, J

This is an application for revision made by the applicants seeking this court to call for and examine the award of the Commission for Mediation and Arbitration for Arusha herein after referred as the CMA, in Labour Dispute No. CMA/ARS/ARS/430/287/19. He also prayed for other reliefs this Court deems fit to grant. He moved this court by way of notice of application, and chamber summons under sections 91(1)(a), 91(2)(c) and 94(1), (b), (i) of the Employment and Labour Relations Act No.6 of 2004 and rule 24(1),

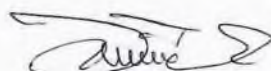


24(2), (a), (b), (c), (d), (e) and (f) and rule 24(3), (a), (b), (c), (d) and (e) of Labour Court Rules, G.N. 106 of 2007. The application was support by the affidavit sworn by Mr. Sylvester S. Kahunduka, counsel for the applicant. The applicants preferred this revision basing on following grounds;

- i. That, the Honourable Arbitrator erred in fact and in law by reaching a conclusion that the applicants were on a specific task contract and therefore were not entitled to the benefits related to unfair termination.
- ii. That, the Honourable Arbitrator erred in law and in fact in not evaluating properly the evidence adduced during the hearing thus reaching an erroneous decision.
- iii. That, the decision reached by Honourable Arbitrator is ambiguous and bad in law

Consequent to the above stated grounds, the court has been asked to grant the following reliefs;

- a. To vary the award passed by the CMA in the above referred dispute and find that the applicants were full time employees of the respondent.



- b. That the applicants were terminated unfairly as there were no reasons for their termination and the procedure for their retrenchment were not followed
- c. That this court be pleased to grant the prayers envisaged in CMA Form No. 1
- d. Any other relief as the Court may deem fit and just to grant.

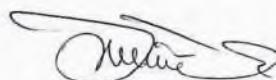
The background facts of this application albeit briefly as they can be deciphered from the record, the application and the submissions by the parties is that; the applicants were employees of the respondent, before the employment relationship had come to an end for reasons and under the procedure to be discussed later in this judgment.

Following that state of affairs, the applicants were not satisfied, they filed Labour Dispute No. CMA/ARS/ARS/430/19/287/19 before the CMA at Arusha, challenging their termination on the ground that the same was not fair. The CMA found that the applicants' application was meritless since their employment was based on special task hence they were not covered by the provisions providing for unfair termination. Aggrieved by the award, they filed this application for revision.

Hearing of the application was conducted orally. At the hearing, parties were represented by the learned counsel, while the applicants enjoyed the services of Mr. Sylvester Kahunduka, learned counsel, the respondent was represented by Mr. Emmanuel Sood, also learned counsel. In support of the application, Mr. Kahunduka argued the three grounds together. In that regard, he submitted that, the applicants were employed by the respondent on diverse dates in the year 2012. In the year 2017, they were given written contracts which were to end at the end of the year 2017. However, at the end of 2017, they were not given new contracts but continued working without signing another written contract.

According to him, on 28th June 2018 the applicants were given a verbal notice of termination through retrenchment procedure on the ground that the employer faced economic difficulties. The applicants testify that, at the end of each complete year of service were being given a 28 days' annual paid leave, as exhibit D1 shows clearly that they have been given 28 days paid leave.

He further submitted that section 4 of the Employment and Labour Relations Act, [Cap 366 R.E 2019] defines specific task to mean a task which is occasional or seasonal but not continuous in nature. He referred this court

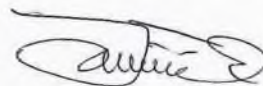
A handwritten signature in black ink, appearing to be 'M. Sood', written over a horizontal line.

to the proceedings of the CMA which shows that, the applicants were employees of the respondent continuously from 2012 up to 28th June 2019 when their termination was effected.

Counsel for the applicants urged the court to find that, their employment was not occasional or seasonal. He further submitted that in contracts on a specific task the person is paid at the end of that task and the relationship ends after their task. The act of paying the applicants an annual leave signifies and proves that they were permanently employed and not employees for specific task.

He further submitted that, the 1st and the 4th applicants tendered letters of resignation. An employee who has no continuous work relation is on the specific task. He/She has no need of tendering resignation letter, so the averment that, they tendered resignation letters proves that they were on permanent basis.

Mr. Kahunduka further submitted that, the applicants were unfairly terminated therefore, they were entitled to the benefits of unfair termination. He added that, the procedure for termination was not followed as the applicants saw a notice on the notice board mentioning them that they were

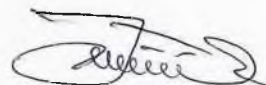


to attend the meeting. In that meeting, they were informed that, the company had no capacity to pay them, but they were not offered alternative employment. He further submitted that, since there were procedural irregularities, he prays this Court to vary the award of the CMA because the procedures for termination were not followed.

In reply submission, the learned Counsel for the respondent informed the court that, there is evidence which is exhibits P1 and P2 which show clearly that, the two applicants Ms. Elizabeth and Mr. Elia Mwanga had resigned hence he urged this Court to mark their application as abated.

Mr Sood, further submitted that, the applicants were employed for a specific task. He even insisted that, the law is very clear that employees of a specific task are not entitled to reliefs as per the provision providing for unfair termination. The Counsel further submitted that, exhibit P3, (a contract for employment) shows that, the applicants were employed for a specific task not otherwise. According to him, the contract is straight forward that payments were to be paid on daily basis.

It was his further submission that, since the applicants failed to produce the salary slips to prove that, they were employed on the monthly



basis, it is clear that they do not qualify to benefit from the reliefs as provided under the provisions of unfair termination.

The learned counsel further submitted that, the award was vague but they did not submit anything to prove such vagueness. It is clear that, for the judgment to be considered as a good judgment it should be clear, systematic and straight forward. He further submitted that, he is not only assured of the clarity, and comprehensiveness of the CMA award but also the award is straight forward. He concluded his submission by praying this court to rule that, it lacks merits.

In rejoinder submission, counsel for the applicants reiterated what he submitted in his submission chief adding facts that. The alleged contract for specific task expired in 2017. According to Mr. Kahunduka, there were no other fixed term contracts which were signed, hence the applicants continued to work without new contracts. He further submitted that, the only issue which the learned counsel for the respondent failed to answer is, when those contracts were to end, hence their contracts were permanent. Mr. Kahunduka further submitted that, the employer does not deny that the employees were employed in 2012; therefore, submitting that there was no

proof is completely an afterthought. He reiterated the prayers sought in the submission in chief.

Having considered the record, affidavits as well as the submissions by counsel for both parties, the main issue for determination is whether this application is meritorious?

In reply submission by counsel for the respondent raised a point which when properly construed it meant that, the two applicants namely Ms. Eliza Alfred Chuwa and Mr. Elia Mwanga had no *locus standi* because they had already resigned as proved by exhibit P1 and P2; The two letters written by the two applicants show that they resigned from the employment. Since this is a point of law, then I opt to start with this issue. Although this issue was raised in the reply submission, the applicants did not counter it in their rejoinder submission.

Looking at the merits of this issue, according to the record, Ms. Eliza wrote that resignation letter on the 20th May 2019 and it was accepted by her employer on 20th February 2020. It is also on record that, on 13th August 2019, Mr. Elia Mwanga wrote a resignation letter and it was accepted on the

very same day. It goes without saying that the two applicants undisputedly decided to stop working, hence cannot claim unfair termination.

Turning to the other three applicants, it goes without saying that these were the employees of the respondent as proved by exhibit P3 which shows clearly that they were employed by the respondent. The next issue is, what kind of employment contract? The answer to this is in the same contract which has the terms stating clearly that, the applicants were employed for specific task, and it is also shown that the terms of their payment is on daily basis as stated at clause 4 of the said employment contract.

Section 14 of the Employment and Labour Relations Act, [Cap 366 R.E 2019] provides that;

14(1) A contract with an employee shall be of the following types;

(a) a contract for an unspecified period of time;

(b) a contract for a specified period of time for professionals and managerial cadre

(c) a contract for a specific task."

In the case of **Asanterabi Mkonyi vrs Tanesco**, Civil Appeal No. 53 of 2019, the Court of Appeal at page 4 cited with approval the case of



Mtambua Shamte & 64 Others vrs Care Sanitation and Suppliers,

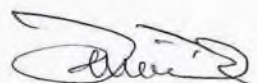
Revision No. 154 of 2010 (unreported) in which it was held that:

"Now, the principles of unfair termination under the Act do not apply to specific tasks or fixed term contracts which come to an end on the specified time or completion of a specified task. Under the latter, such principles apply under conditions specified under section 36 (a) (iii) read together with Rule 4(4) of the Code. Such conditions are said to exist where an employee reasonably expects a renewal. Where such expectation exists, termination of employment must be fair as defined under the whole of section 37 of the Act"

The only exception to the above principle is that, the employees employed for specific task or for the fixed term contract, can claim for unfair termination only when it is found that, there were terms in the contract providing for the renewal of their contracts, but their employers have disregarded such renewal terms and decided to terminate them.

The exception stated above is provided under section 36(a), (iii) of the Employment and Labour Relations Act, [Cap 366 R.E 2019], which reads as follows;

"36. For purposes of this Sub-Part

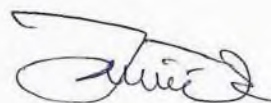


(a) termination of employment includes;

(iii) a failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal. " (Emphasize added).

There is nowhere the applicants have proved to the extent of substantiating the above exception with regards to their contractual terms, hence this Court is of the opinion that, the applicants were employed for specific task, and there were no renewal terms in their contracts.

In line with the above principles, it is my considered view that, the applicants relied on the above mentioned contract which is exhibit P3 to prove their employer and employee relationship. That being the case, as the terms of the particular contract shows, that, employees were employed for the specific task. I go along with the CMA award and the respondent's counsel argument that, the particular contract is the best evidence before this court in proving the terms of employment in that particular contract. On that basis, this Court is satisfied that, the applicants were employed for a specific task with no terms of renewal, therefore they were not covered by the exception provided under section 36 (a)(iii) of the Employment and

A handwritten signature in black ink, appearing to be 'J. J. J.', is located at the bottom right of the page.

Labour Relations Act (supra). That said, this application lacks merits and it is hereby dismissed with no order as to costs.

It is accordingly ordered.

DATE at **ARUSHA** on the 20th day of October 2022.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

J.C. TIGANGA

JUDGE.