

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**LABOUR REVISION NO. 38 OF 2022**

*(Arising from Labour Dispute No. CMA/MZ/NYAM/303/2021/01/2022)*

**VALENTINE SHIPULA.....APPLICANT**

**VERSUS**

**OXFAM GB.....RESPONDENT**

**JUDGMENT**

**4<sup>th</sup> Oct. & 15<sup>th</sup> Dec.2022**

**DYANSOBERA, J.:**

The applicant Valentine Shipula unsuccessfully referred a labour dispute No. CMA/MZ/NYAM/303/2021/01/2022 to the Commission for Mediation and Arbitration. Dissatisfied by the decision delivered on 5 May 2022, the applicant has filed this application under the provision of Sections.91(1)(a) and 2(b), and s. 94(1)(b) of the Employment and Labour Relations Act [Cap 366 R.E 2019], rule 24(1), (2)(a)(b)(c)(d) (e) and (f) and 3(a)(b) (c)(d) and rule 28 (1)(c)(e) of the Labour Court Rules, GN No.106 of 2007 craving for the following orders:-

- a) That this Honourable Court be pleased to call for, examine and revise the record of Commission for Mediation and Arbitration at Mwanza on Labour dispute No. CMA/MZ/NYAM/303/2021/01/202

and satisfy as to the correctness, legality or propriety of the Award given on 5<sup>th</sup> May 2022.

- b) That this Honourable Court be pleased to revisit the evidence and come out with its own decision on the following issues, namely, consequences of breaching the contract before its time limit, failure to follow the procedure of breaching the specified time contract, unfair labour practice and the reliefs.
- c) That this Honourable Court be pleased to order the respondent to pay the applicant TZ 13,791,924 being compensation for the breach of the contract of employment and pay TZ 55,167,696/= being compensation unfair labour practice (mwenendo mbaya).

On 14<sup>th</sup> Sept. 2022 when this application came for hearing an order was made that the application be disposed of by way of written submissions, in which the applicant was ordered to file his written submission in chief by 21<sup>st</sup> September, 2022, the respondent had to file a written reply by 28<sup>th</sup> September, 2022 and the applicant had to file a written rejoinder, if any, by 4<sup>th</sup> October 2022. Both parties complied with the time frame.

Briefly, the facts leading to this application are that the applicant was employed by the respondent as a programme coordinator at Mwanza on a 2-year fixed term contract commencing from 1<sup>st</sup> April 2020 and ending on

30<sup>th</sup> March 2022. On 31<sup>st</sup> December, 2021 the respondent terminated the contract after their several unsuccessful meetings conducted between the employer and the employees, the applicant inclusive. The reason for termination was the withdrawal of the donors and financial supporters.

Before the Commission for Mediation and Arbitration, the applicant sought to be paid compensation to the tune of TZ 13,791,924 as payment of salary up to the end of his employment contract, and payment of TZ 55,167,696 as compensation for unfair labour practice committed by the respondent. The Commission for Mediation and Arbitration, in its Award, found the applicant's application wanting in merit and dismissed it.

Before this court, the applicant is challenging the award on four (4) grounds set out in the Statement of Legal Issues, under paragraph 5 in particular. Mr. Silas John, learned Advocate argued in support of those grounds while Juventus Katikiro, learned Counsel argued in opposition.

Submitting on the first ground, that is 5 (a) on whether the CMA used illegal grounds to deprive the applicant of the relief of the remaining three months' salary in his contract which the respondent terminated before its time, Counsel for the applicant contended that the CMA illegally exercised its powers by denying the applicant of his claims of 13, 791, 924 as compensation for breach of contract and 55, 167, 696 as punitive compensation for unfair labour practices on the grounds that since 90% of

the respondent's employees were terminated, there was a valid reason and fair procedure that the applicant was entitled to nothing and further that there was no unfair labour practice committed by the respondent. Expounding on this ground, Mr. Silas John submitted that there was no dispute that the respondent ended the contract three months before its time and that the reason that 90% of the respondent's employees was an insufficient ground to deny the applicant of the payment of his remaining three months' salary. This court was referred to the case of **Generics and Specialities Ltd v. Kalenga Katele**, Labour Revision No. 833 of 2019 on the authority that when a fixed term contract is ended before the time, the loss of salary of the remaining period by the employer is a direct foreseeable and reasonable consequence.

On the second ground that is ground 5 (b) on whether it was legally wrong for the CMA to determine that the respondent had a valid reason to terminate the contract, Counsel for the applicant argued that the law knows two valid reasons to end a fixed term of contract, one is that the employee materially breaches the contract and two, the employee agrees to the early termination of the contract. Reliance was placed on rule 8 (1) (a), 2 (a) and (b) of the Employment and Labour Relations (Code of Good Practice) Rules, GN No. 42 of 2007. It was further argument of the learned Counsel that the law does not recognize termination of a fixed term of contract on

ground of financial hardship. Counsel asserted that in this case, the respondent hired new staff and the evidence of DW 1, one Rosemary Nyatega, the Human Resources Manager admitted that there was neither bankruptcy or winding up proceedings filed nor were there any books of accounts to prove what the respondent's financial position was. In the Counsel's opinion, the respondent miserably failed to prove that she was in financial hardship.

With regard to ground No. 5 (c). on whether it was illegally erroneous in determining that the respondent followed the procedure for breach a specified term of contract, Counsel for the applicant wanted the court to answer this issue in the affirmative. He relied on rule 8 (1) (a), 2 (a) and (b) of the Employment and Labour Relations (Code of Good Practice) Rules and asserted that the law requires to be an agreement to early termination or else the respondent should be condemned to pay the remaining salary as compensation.

On the last ground, that is 5 (d) on giving an award contrary to the weight of the applicant's evidence in relation to the unfair labour practice, it was submitted on part of the applicant that the Employment and Labour Relations embodies principles of fair labour practices in respect of all employees irrespective of their categories. The case of **Happiness Geff v. Wadhamini wa KKKT (Dayosisi Mashariki Ziwa Victoria)**, Revision

No. 200 (2013) LCCD363 and that failure to follow laid down labour laws amounts to unfair labour practice

In responding to 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds Counsel for the Respondent submitted that, it is on record and testimony of PW 1 is clear that paragraph 2 of the award and Exhibit Sm2 that the applicant received the notice of intention to terminate his employment contract and notified him that notice of termination commences from 3<sup>rd</sup> September, 2021 to 31<sup>st</sup> December, 2021. Further that in the second paragraph at p. 3 of the award, the applicant admitted the reasons for termination of his employment contract which was economic hardship following withdrawal of international donors who were supporting more than 90% of the respondent's budget which necessitated the activities of respondent to be closed in December 2021 making more than 90% employees to be retrenched.

It was the further contention of learned Counsel for the respondent that at through exhibit SU1, the applicant did participate in the negation and meetings to have his employment terminated and the offer given to the applicant included severance pay, NSSF benefits, transport and monthly salary for three months from the date of notice to date of termination. He supported his argument by making reference to rule 8(2)(d)(i) of GN 42 of 2007, which provides that the employer may terminate the contract by giving the notice of termination to the employee. Counsel for the

determination in this case to be: on 3 months of unpaid salary before the contract between the parties came to an end.

It was sufficiently proved that the reasons for termination was due to economic hardship and that more than 90% of employees were retrenched from their positions and there had been issued with notices-exhibit SU 1. This occurred after the donors had withdrawn their financial support. It is not disputed that the respondent communicated this plight to her employees through various meetings.

The argument on part of the applicant that the law does not recognize termination of a fixed term of contract on ground of financial hardship is not a correct legal proposition. Depending on the terms of the contract and the circumstances of the case, even a fixed term of employment contract can have a provision in which the employers can terminate the contract on certain grounds before the due date.

However, since there was a specific date to which the parties committed themselves to and were bound to perform their respective obligations, the redundancy was not, in my view, the proper course the respondent had to take. She was first duty bound to make consultations with the employees on the ways to try to avoid it or mitigate its effects and this endeavour would have signified that the termination process was fair. Else, the respondent had to look for suitable alternative employment for

the applicant. If the respondent had no further work to offer to the applicant, the best option would have been to pay out the remainder of the contracted time and not to retrench him.

The Commission for Mediation and Arbitration committed a serious error when it found that the applicant who was terminated before the expiry of the period that had been specified in the contract was entitled to nothing.

For those reasons, the application is granted. The Award by the Commission for Mediation and Arbitration is revised by quashing and setting it aside. I order the respondent to pay out to the applicant the remainder of the contracted time as it is his statutory entitlement.

Right of Appeal Explained.



  
**W.P. Dyansobera**  
**Judge**  
**15.12.2022**

This Judgment is delivered at Mwanza under my hand and the seal of this court on this 15<sup>th</sup> day of December, 2022 in the presence of Mr. Melchizedek Gunda, learned Counsel for the applicant and Mr. Kelvin Ngereja, learned Advocate for the respondent.

  
**W.P. Dyansobera**  
**Judge**