

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**LABOUR DIVISION**  
**AT ARUSHA**

**REVISION NO. 59 OF 2021**

*(Originating from Commission for mediation and Arbitration No.  
CMA/ARS/ARS/30/21)*

**MAULID MAULID ..... APPLICANT**

**VERSUS**

**KILIMANJARO ENGLISH MEDIUM SCHOOL ..... RESPONDENT**

**JUDGMENT**

17/02/2022 & 14/04/2022

**KAMUZORA, J:**

Before the Commission for mediation and Arbitration for Arusha (the CMA) Maulid Maulid (the Applicant herein) filed labour dispute vide CMA/ARS/ARS/30/21 against Kilimanjaro English Medium School (the Respondent herein) for unfair termination of his employment. The CMA having considered the evidence by the parties made a decision that, the claim for unfair termination was prematurely filed by the Applicant hence it was dismissed, and the Applicant was ordered to report back to work within 14 days.

Being aggrieved by the CMA award the Applicant preferred the current revision Application on the following grounds: -

- 1. That, the arbitrator erred in law and fact by relying on the suspension inquiries and that the dispute for unfair termination is premature while now is more than six months from the date the Applicant was given suspension and the Respondent did not provide salary to him and his status as employee or not is unknown.*
- 2. That, the trial Arbitrator erred in law and fact by failure to consider that the Respondent's act has caused the Applicant's economic instabilities because he had no employment and had to be attending at the Commission for more than three months.*
- 3. That, if the prayers sought in the notice of application will not be granted, the Applicant will suffer irreparable loss.*

Before I go the submissions by the parties in respect of the revision application, it is crucial to demonstrate the facts giving rise to the present application in brief as may be depicted from the records.

The Applicant was employed by the Respondent as a cleaner and was receiving a monthly salary of Tshs 150,000/=. The Applicant claims to have been terminated from employment on 04/01/2021 by receiving a suspension letter which required the Applicant not to go to work until the Respondent calls him for disciplinary hearing. The Applicant decided to report to the Legal and Human Rights Centre and later Labour dispute was instituted at the CMA.

The CMA made a determination that the dispute was prematurely filed as the Applicant was not terminated from work but rather was suspended from work pending disciplinary hearing thus the complaint was dismissed for lack of merit. Being discontented by the CMA award the Applicant preferred this current application which was supported with an affidavit sworn by the Applicant himself. The application was strongly opposed by the Respondent through a counter affidavit sworn by Shuaiba Yahya Abdi, the school manager of the Respondent.

Hearing of the application was by way of written submission whereas the Applicant appeared in person while the Respondent enjoyed the service of Ms. Farida Juma, a personal representative. Both parties filed their respective submissions as scheduled save that the Applicant did not prefer to file a rejoinder submission.

Arguing in support of the application the Applicant submitted on the first two grounds jointly that, the Applicant was suspended from work for unjustifiable reasons as he waited for more than six months to be summoned to the disciplinary hearing while he was under suspension. That, for all that time he was not receiving his monthly salary as per the requirement of Rule 27(1) of the Employment and Labour Relations (Code of Good Practice) G.N No 42 of 2004 which

requires an employee under suspension to be paid full remuneration for the time he was suspended until the time for disciplinary hearing.

The Applicant submitted further that, the period for suspension has to be reasonable and for this he cited Rule 27(7) of the Employment and Labour Relations (Code of Good Practice) G.N No. 42 of 2004. The Applicant claimed that he waited for more than six months to be called to the disciplinary hearing and he has not been called to date thus faced very hardship life in terms of economic stabilities. That, as his employment has been terminated, he has to attend to the CMA for more than three months.

The Applicant also submitted that the reasons for his suspension was based on the allegation that he was unable to do cleanliness on Sunday and when he reported on Monday he was suspended. He claimed that the said act does not amount to serious allegation that could lead to the suspension of the Applicant.

The Applicant contended that, where there is unfair termination, the employee is entitled to get his rights as per the law under section 31(8), 40(1), 41(1) and 42(1), (2) of the Employment and Labour Relation Act Cap 366 R.E 2019. The Applicant was of the view that, the

CMA order that the Applicant is to return to work has not favoured the Applicant.

Responding to the first ground Ms. Farida Juma submitted that, during hearing before the CMA the Applicant failed to prove that he waited for more than six months for the disciplinary hearing to be conducted. That, the Human Rights centre receipts shows that after the Applicant was issued with the suspension letter on 14/01/2021 he lodged the matter to the CMA and his salary for January 2021 was paid.

Ms. Farida also submitted that since the Applicant worked under a fixed term contract then the CMA F1 filled at the CMA was defective since the Applicant had no permanent contract with the Respondent but rather a fixed term contract and thus the Applicant on the part of Nature of dispute had to tick on a box for breach of contract and not unfair termination. To cement on the issue of defectiveness of the CMA F1 the Respondent cited the case of **Bosco Stephen Vs Ng'amba Secondary School**, Revision no 38 of 2017 HC Mbeya (Unreported), **James Renatus Vs Cate Mining Company Ltd**, Revision No. 1 of 2021 HC at Musoma.

Regarding the second ground of revision, the Respondent's representative submitted that the Applicant is not entitled to terminal

benefits because he was not terminated and the award by the Arbitrator portrays the same.

I have considered the records for the CMA, the application and submission by both parties. From the analysis of the record, there is no dispute that the Applicant was employed by the Respondent in the position of a cleaner. What is in dispute here is whether the Applicant was terminated from his employment contract. The Applicant claim that he was terminated by the Respondent. In determining whether the Applicant was terminated from his employment, this court will be guided by the records.

The record of the CMA shows that, pursuant to exhibit D1 which is a suspension letter dated 04/01/2021 addressed to the Applicant the Respondent did inform the Applicant that he is suspended from his employment due to under performance of his employment duties. The letter however shows that the Applicant was suspended pending disciplinary hearing.

With the above record the CMA reached into a finding that the dispute filed before it was prematurely filed as the Applicant was yet to be terminated from his employment as there was no any direct or indirect proof that there was termination of employment. I also agree

with the findings of the CMA that there was no termination of the Applicant's employment. This is so because the Applicant claimed to be terminated by the Respondent vide exhibit D1 which is a suspension letter dated 04/01/2021. The records also shows that immediately after receiving the suspension letter the Applicant complained at the Legal and Human Rights Centre on 04<sup>th</sup> February 2021 as per Exhibit D2. Then, on 04/02/2021 the Applicant filed a complaint at the CMA as per CMA form used to lodge a complaint. There is no evidence indicating that apart from suspension letter, the Applicant was issued with another letter terminating his employment. With the available records, I agree with the CMA that the Applicant was never terminated from his employment thus his claim before the CMA was prematurely filed. The Applicant was bound to wait for the disciplinary hearing to be conducted and be issued with a termination letter.

The contention by the Applicant that the suspension was for more than six months, and he was not paid salary for that period is unproved. As analysed above, the suspension letter was issued on 04/01/2021 and ten days later on 14/01/2021 the Applicant lodged the complaint at Legal and Human Rights Centres followed by a labour dispute at CMA on 04/02/2021. In his evidence, the Applicant himself admitted having

waited for disciplinary hearing for 26 days and filed a dispute at CMA after one month and not six months. The Respondent claimed that the Applicant was paid all his salary for the time he worked with the Respondent including salary for January 2021. In that regard, claim for six months' salary is unproved. The CMA was correct to state that the complaint was premature.

On the claim by the Respondent's representative that the CMA F1 was defective, this was also raised before the CMA and deliberated upon. It was not among the grounds for revision to be determined by this court as it was just raised by the respondent thus this court is not forced to determine it. I understand that in revision application, this court can determine any issue as to the legality of the proceedings, award or order of the CMA. However, having determined that the whole claim was prematurely filed, the correctness of the CMA Form No.1 becomes immaterial.

On the claim that the Applicant will suffer irreparable loss, the Applicant was unable to address this issue and show how he stands to suffer irreparable loss if the application is not granted. In fact, the application of this nature can only be granted if there is justification of the prayer sought and not because someone is likely to suffer.



From the above arguments and reasons stated, I find no reasons to temper with the decision by the CMA. The labour Dispute was prematurely filed at the CMA before the Applicant could actually be terminated from his employment. This application is thus devoid of merit and it is hereby dismissed with no order as to costs considering that this is a labour dispute.

**DATED** at **ARUSHA** this 14<sup>th</sup> Day of April 2022.



  
D.C. KAMUZORA

JUDGE

