

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**REVISION APPLICATION NO. 33 OF 2021**

(Arising from Arbitral Award of the CMA at Arusha Ref. No.  
CMA/ARS/ARS/351/20/208/20)

**PRIME SCHOOLS.....APPLICANT**

**VERSUS**

**FRANCIS SOLLA..... RESPONDENT**

**JUDGMENT**

23/2/2022 & 30/3/2022

**ROBERT, J:-**

The Applicant, Prime Schools, seek to revise the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/ARS/ARS/351/20/208/20 delivered on 30<sup>th</sup> day of March, 2021. The application is supported by an affidavit sworn by Ms. Elineema Tesha, the Applicant's representative in this matter.

Briefly, facts giving rise to this application reveals that, the respondent lodged a dispute at the CMA alleging unfair termination against the applicant. He alleged that he was employed by the applicant

as a Security Guard from 18<sup>th</sup> August, 2015 at a salary of TZS 140,000/= per month. The dispute arose during the outbreak of Coronavirus pandemic when the Government announced closure of schools on 19<sup>th</sup> March, 2020. As a consequence, the applicant asked the respondent to stop going to work pending reopening of schools by the Government. However, they agreed that that the applicant would pay the respondent his full monthly salaries for March and April, 2020 and half of the monthly salaries for each of the subsequent months from May, 2020 until the opening of the school. Despite the agreement, the respondent alleged that he was only paid half of the monthly salary for the month of May. Dissatisfied, the respondent referred the dispute to CMA claiming compensation at a tune of TZS 2,848,461/= for unfair termination. The applicant maintained that the respondent was not her employee as he was only doing auxiliary work at the school.

After a full trial, the CMA decided that the respondent was an employee of the applicant and he was unfairly terminated. The applicant was ordered to pay the respondent compensation for unfair termination as well as payment of other benefits as computed by the CMA. Aggrieved by the CMA award, the applicant preferred this application for revision.

At the hearing of this application, the applicant was represented by Ms. Elineema Tesha, whereas Ms. Aika Kweka appeared as personal representative for the respondent. At the request of parties, application was disposed of by way of written submissions.

Highlighting on the application, Ms. Tesha submitted that, due to the respondent's old age, he was employed by the applicant to do some light duties as an auxiliary staff. After an order of the Government for closure of schools due to covid 19 pandemic, the school convened a meeting with all auxiliary staff on 29<sup>th</sup> April, 2020 where they agreed that due to the school's financial situation the employees will be paid half of the salary for two months (April and May) and if the pandemic continues, there would be no more payments as the school depends on the fees paid by the students. Thus, the employees were advised to stay at home and they would be called when the situation improves.

In July, 2020 the respondent went to school demanding payment of half the salary but he was informed that the school was not in a good financial situation and he was reminded to stay at home pending the improvement of the situation. However, the applicant was surprised to learn that the respondent had referred the matter to the CMA claiming unfair termination while he was not yet terminated. She maintained

that, during the pandemic employers were forced to lay off employees due to financial difficulties and the applicant was not exceptional in that situation and the. He indicated that the respondent would still be on duty until now.

She faulted the CMA for deciding that the respondent was terminated while there was no evidence to that effect and for ordering payment of compensation. He prayed for the CMA award to be set aside.

Opposing the application, Ms. Aika argued that, the respondent claim for unfair termination was caused by the applicant's act of stopping to pay his salaries. With regards to the argument that the respondent was just an auxiliary staff doing light works, he maintained that, it is not correct as the respondent was attending day and night shift as other guards and the applicant produced no evidence to prove that he was an auxiliary staff.

Submitting further, she maintained that, although on 29/4/2020 parties agreed that the applicant will pay the respondent half of the salary until the opening of the school, the respondent received half the salary for the month of March only. Further to that, the Government having announced the opening of schools on June, 29 the applicant did

not call the respondent back to school to resume his work as agreed during the meeting. Hence, the respondent maintains that he was unfairly terminated and justice has been done as far as the remedies given by the CMA.

In her brief rejoinder, Ms. Tesha insisted that the CMA award was given prematurely as at the time of filing a dispute at the CMA the respondent was still an employee of the applicant and that he went against the agreement entered on 29/4/2020 between the applicant and auxiliary staff. He prayed for the CMA award to be set aside.

From the submissions of both parties and records of this matter, the question for determination is whether the respondent was unfairly terminated both substantively and procedurally and what reliefs are the parties entitled to.

On the question of termination, Labour laws mandate that a termination for an employment must be made on a fair reason. That is substantive fairness, and must follow fair procedures. The applicant is insisting that at the time of filing this dispute at the CMA the respondent was not terminated. On the other hand, the respondent is maintaining that after the closure of the school there was an agreement between

him and the respondent which was signed on 29 April 2020 where they agreed that the respondent would stay at home and the applicant would call him back to work after reopening of the school which the applicant has failed to honour.

Having revisited the CMA's record particularly on the said agreement "Kikao cha Maswala ya Wafanyakazi" part of it reads as follows;

"Hivyo Mzee Solla alielezwa hayo na kukubaliana kuwa shule itamlipa mshahara wake wa mwezi wa tatu wote, mshahara wa mwezi wanne na wa tano atalipwa nusu mpaka hapo serikali itakapotoa tangazo ya kurejea shuleni na bada ya wazazi/walezi kuweza kulipa ada za shule za muhula wa kwanza ndipo Mzee Solla atakapoitwa tena na uongozi wa shule kwa ajili ya kulipwa mshahara nusu ambao hakuwa amelipwa mwezi wanne na watano na kuendelea na utaratibu wa hapo awali wa majukumu yake na shule."

The agreement indicates that the applicant had agreed to pay the respondent half of his salary from the month of May until the reopening of the schools. However, at the CMA the respondent alleged that when the schools were reopened on 29<sup>th</sup> June, 2020 the applicant did not call him back to work as agreed and when he visited him in July to inquire

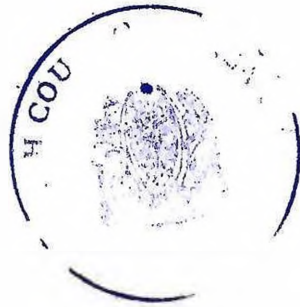
about his payments and employment, the applicant told him that the school is not in a good financial position and asked him to stay at home until they called him back to work. Now the question is whether the respondent was still at work with the applicant without doing any kind of work or receiving any salary.

As rightly held by the CMA, the applicant and respondent were in an employer and employee relationship, thus, without following the required procedures it was wrong for the applicant to stop the salaries of the respondent even if he was staying at home due to pandemic. Further to that, it was not disputed that the applicant opened the school on 29<sup>th</sup> day of June, 2020 but did not call the respondent back to work. Under the circumstances, this Court agrees with the findings of the CMA that the applicant's act of asking the respondent to stay at home without paying him any salary while others have gone back to work amounted to unfair termination.

As to the reliefs for the parties, since the Court ruled that the respondent was unfairly terminated, the CMA was right to award the respondent the said entitlements following its findings on unfair termination.

In the circumstances, I find no need to disturb the CMA award.  
Consequently, I dismiss this application for lack of merit.

It is so ordered.



K.N.ROBERT  
JUDGE  
30/3/2022