IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

REVISION NO. 54 OF 2021

(Originating from Commission for Mediation and Arbitration (CMA) in Application No. CMA/ARS/ARS/22/2021)

JACOB JOSEPH KOTOROI .....APPLICANT

VERSUS

NAKI SECURITY COMPANY LIMITED ..... RESPONDENT

JUDGMENT

14/04/2022 & 26/05/2022

KAMUZORA, J.

The Applicant Jacob Joseph Kotoroi, being aggrieved by the decision of the Commission for Mediation and Arbitration (CMA) preferred this revision under sections 91(l), (a) or (b),91(2) (a) or (b) or (c), and section 94(1) (b) (i) of the Employment and Labour Relations Act No. 6/2004, Rule 24(1) 24(2) (a) (b) (c) (d) (e) (f) and 24(3) (a) (b) (c)(d) and Rule 28(1) (a) (b) (c) (d) & (e) of the Labour Court Rules G.N No. 106/2007. The Applicant prays for this Court to be pleased to call for the records and revise the decision in CMA/ARS/ARS/22/2021.

The brief facts of the dispute between the parties as depicted from the CMA records as well as this application are such that, the Applicant was employed by the Respondent as a security guard. The Applicant claimed that he was terminated from his employment contract by the Respondent for no reason. Being aggrieved by the said termination, the Applicant decided to file a complaint at the CMA where as the CMA after hearing the evidence adduced by both sides reached a decision that there was no any breach of employment contract but rather the Applicants contract came to its end.

Being aggrieved by the CMA award, the Applicant preferred this current revision application based on the following reasons: -

1) *That, in determining the dispute, the honourable mediator gravely misdirected himself by relying on evidence of a contract which the Applicant has stated that he had not signed, thereby arriving at a wrong conclusion.*
2) *That, during the hearing the Applicant was not properly represented and thus the proceedings were not fair and just.*
3) *That, the commission erred in law and fact for failure to evaluate and to give consideration the evidence, grounds and reasons presented before the CMA by the Applicant.*

Hearing of the application was by way of written submission, and as a matter of legal representation, the Applicant enjoyed the service of

Ms. Francisca Lengeju, learned advocate from Legal and Human Rights Centre, while the Respondent enjoyed the service of Mr. Wilhada Kitaly, learned advocate. Each part filed its submission save that there was no rejoinder submission filed by the Applicant.

The counsel for the Applicant argued jointly for the 1st and 3rd ground of revision while the 2nd ground of revision was argued separately. Starting with the 2nd ground it was submitted that during the hearing the Applicant was not properly represented and thus the proceedings were not fair and just. The Applicant's counsel expalined that, at the beginning of this matter the Applicant sought help from the Legal and Human Rights Centre. That, during the hearing someone by the name Amani Kaduma represented himself as an officer from Legal and Human Right Centre who introduced one Musa Mulata to the Applicant as his advocate. That, during the hearing the Applicant noticed some discrepancies but he was assured by his advocate that all is well until the ending of the proceeding when he lost the case and he realised the deceit that had taken place.

The counsel for the Applicant contended that, the impersonation by Musa Mulata had made the Applicant and the CMA to believe in him that he is an advocate while he is not. That, despite the efforts made by

the Applicant in searching him in Wakili data base the results showed that he was not among the practising advocates. The counsel is of the view that, the act of impersonation is illegal and the Applicant was not properly represented during the trial. That, it has been a long-established legal principle that, unqualified advocates are not allowed to draft document and he or she is barred from representing clients in courts of law. Reference was made to the case of **AUA Industrial Group Ltd Vs. Wia Group ltd**, Civil Cause No 44 of 2019 HC at Dar es Salaam (Unreported).

The Applicant's counsel also insisted that, the right to be heard is a fundamental right enshrined under Article 13(6) (a) of the Constitution of the United Republic of Tanzania of 1977. That, the denial of the right to be heard in any proceeding would vitiate the entire proceeding. Reference was also made to the case of **Abbas Sherally and Another Vs Abdul S. H. M. Fazalboy,** Civil Application No. 33 of 2002.

The Applicant's counsel was of the view that, in the instance case it is evident that the act of one Musa Mulata posing as an advocate for the Applicant caused the Applicant not to be accorded with the right to be heard, hence the mediator arrived at his findings in contravention of a right to be heard.

Regarding the 1st and 3rd grounds of revision Ms. Francisca submitted that, during hearing the Respondent presented exhibit P2 (contract of employment) alleged to be signed by the Applicant and the commission relied on such evidence as a proof that the contract had come to its end. The counsel however claimed that the Applicant signed his contract of employment on April 2020 and was supposed to end in April 2021. That, the Applicant denied the said signature but the same was not taken into consideration as the commission did not give audience to the Applicant's testimony.

Basing on the above submission the Applicants prays that the proceeding and the decision by the CMA be pronounced as nullity.

Contesting the application, the counsel for the Respondent submitted in the outset that there was no application for condonation at the CMA as what was filed was a labour dispute through the CMA F No. 1. That, the facts deponed under paragraph 3 of the Applicant's affidavit are not true hence prayed for this court to disregard them.

Responding to the 2nd ground of revision the counsel for the Respondent submitted that, the issue that the Applicant was not well represented is within the knowledge of the Applicant and had never been the issue at the CMA. That, this ground had no merit since in

labour laws allow the parties to be represented by either member, an official of party to a trade union or employees association, or advocate or personal representative of their own choice. The Respondent counsel was of the view that the case of **AUA Industrial Group Ltd** is distinguishable because the material facts are different with the present matter and that, the CMA is not a court but a quas judicial body which is guided by its own laws and rules. The counsel for the Respondent added that, for a proof that a person is not an advocate there must be a letter from the Registrar of the High Court and from the Tanganyika Law Society. That, the wakili data base is not a conclusive proof that the said Musa Mulata is not an advocate. That, if Musa Mulata was not an officer of the Legal and Human Right Centre then they could annex an affidavit from the Principal Officer of the Legal and Human Rights centre.

The Respondent's counsel highly disputes the claim that the Applicant was not given the right to be heard. The counsel insisted that, the Applicant was allowed to appear with his representative at the CMA, hence the Applicant was not denied his right to be heard at the CMA. That, the cited Article of the constitution and the case of Abbas Sherally are irrelevant.

Responding to the 1st and 3rd grounds of revision the counsel for the Respondent submitted that, the arbitrator was correct to hold that the Applicant's employment contract was a fixed term contract which ended in 31st January 2021 as per exhibit D1 and Applicant's testimony during cross examination. The Respondent supports the findings of the arbitrator and the case cited in the award including the case of **Yesaya Mwalugaja v M/S Shield Security (T) Ltd,** Revision No 333 of 2013 and the case of **Dar es Salaam Baptist Sec School V Enock Ogala,** Revision No. 52 of 2009.

The Respondent strongly disputes the fact alleged by the Applicant that there was an employment contract signed in April 2020 and the fact that such contract was in possession of the Respondent. The Respondent's counsel was of the view that, if such contract existed the Applicant would have applied before the CMA under rule 27(1) of the Labour Institution (Mediation and Arbitration) Rules, 2007 G. N No 64 of 2007 for the Respondent to produce document.

Basing on the above submission the Respondent prays that the revision application be dismissed for lack of merit.

Starting with the 2nd ground, it was alleged that the Applicant was not accorded right to be heard by being represented by unqualified

advocate. It is the settled principle that parties to labour dispute have right to legal representation and a party is at liberty to choose his own advocate or personal representative. Section 56 of the Labour institution Act Cap 300 R. E 2019 provides for the representation in labour Court and it states that,

> *"In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented by-*
> *(a) an official of a registered trade union or employers' organisation;*
> *(b) a personal representative of the party's own choice; or*
> *(c) an advocate."*

It is my opinion that the purpose of the law is to ensure the person representing the party before CMA or before this Court have been appointed by the respective party. The CMA record portrays that, the CMA F1 was signed by the Applicant himself. The opening submission as well as the closing submission was drawn and filed by the Applicant himself. During the commencement of the complaint until the date of framing issues for determination by the commission the Applicant appeared himself. However, during the hearing of the application the Applicant was represented by one Musa Mulata who was recorded as an advocate.

Much as the record of the CMA states, the Applicant was the one who authorised the appearance of Musa Mulata during the hearing before the CMA. I say so due to the fact that it was in the knowledge of the Applicant that he was represented by one Musa Mulata and in fact, he is the one who requested for his service. So, even if proved that the said Musa Mulata was not an advocate when he appeared before the CMA, he will still stand as proper representative of the applicant as the applicant himself agreed to be represented by him. He was presented and agreed to be examined by Musa Mlata proving that he approved his services.

Apart from the claim of misrepresentation deponed in the affidavit, no evidence was attached to the affidavit proving that there was misrepresentation before the CMA and the CMA was made aware and ignored the same. Much as the law allows even personal representatives to represent parties in labour disputes. it become the duty of the party seeking legal representation to opt for representative whether an advocate or not. If the Applicant represented Musa Mlata as his representative, it cannot be said that the CMA was wrong to allow such

a representation to make this court at this juncture to conclude that the representation was not fair.

The Applicant's claim that he was not given his right to be heard at the CMA is improperly construed. The records are clear as the Applicant adduced his evidence at the CMA and tendered various documents. He was also availed a right to cross examine the Respondent witness which the same was done by the representative of his own choice. I therefore find no merit to the 2nd ground of revision.

Regarding the 1st and 3rd grounds, from the analysis of the submissions and the records in this matter, there is no dispute that the Applicant was an employee of the Respondent. What is in dispute between the parties herein is the time to when the employment contract came to an end. While the Applicant submitted that his contract was terminated before it ended, the Respondent claims that the Applicant's contract came to its end thus he was not terminated.

The evidence before CMA and especially exhibit D1 which is the contract of employment shows that the commencement date of the contract was on 01/02/2020 and it was a one-year contract with no clause for renewal. The Applicant also when cross examined, acknowledged signing the contract on 01/02/2020. It is with no doubt

that the one-year contract was ending on 01/02/2021 and exhibit P1 was informing the Applicant that his contract came to an end and he was also issued with exhibit P2 which is a certificate of service drafted on 30/01/2021 but served to the Applicant on 01/02/2021 the date when the contract came to an end.

The law under section 14 of the Employment and Labour Relations Act, Cap 366 R.E 2019 provides for three types of contracts,

a) a contract for un specified period of time.

b) A contract for a specified period of time for professional managerial carder.

c) A contract for specific tasks

The available evidence on record support that the Applicant's contract was for a fixed term contract. The contract itself did not create expectation for renewal as it contains no such clause. It is in my knowledge that once there is a fixed term contract, no any issue of unfair termination of contract can be raised. The same was held by this court in the case of **Msambwe Shamte and 64 Others Vs. Care Sanitation and Supplies**, Revision No. 154/2010 at that page 8 which quoted with approval from the case of **Jordan University Collage Vs**

Flavian Joseph, Revision No 23 of 2019 HC Labour Division at Morogoro. It was held that,

> *"Principles of unfair termination under the Act, do not apply to specific task or fixed term contract which came to an end on the specified time or completion of specific task, under the letter, such principles apply under conditions specified under section 36(a)(iii) read together with Rule 4(4) of the code."*

With the above provision, it was wrong to claim for unfair termination where there is a fixed term contract. I also agree with the findings by the CMA that where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires unless the contract provides otherwise. This is subject to Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) Rules, GN No. 42 of 2007.

In the present matter, the contract did not state if it was renewable thus, created no expectation. The contract therefore terminated automatically when its period expired on 01/02/2021. The contention by the counsel for the Applicant that the Applicant signed his contract of employment on April 2020 and was supposed to end in April 2021 is unjustifiable. No evidence to that effect was presented before

the CMA. The records shows that when he was examined in chief, the Applicant did not state the date he signed the contract. It was during cross examination when he mentioned that he signed the contract on 01/02/2020 and on being re-examined, he claimed to sign the contract on 01/04/2020 thus contradicting himself. There is nowhere in evidence where the Applicant denied signing the contract on 01/02/2020 as so alleged in the Applicant's submission. The CMA was therefore correct to consider exhibit P2 as a proof that there was contract of employment between the parties that commenced on 01/02/2020. The claim that the CMA did not take into consideration Applicant's testimony is as well unjustified. The CMA considered the evidence of both parties before it came to the conclusion and page 3 to 4 of the CMA award is relevant. That being said, this court finds no merit in the 1st and 3rd grounds.

In the upshot and considering what was discussed above, I do not see any reason to interfere with the CMA award. This application is therefore devoid of merit and is hereby dismissed with no order for costs considering the nature of dispute being a labour dispute.

DATED at **ARUSHA**, this 26th day of May, 2022

D.C. KAMUZORA