

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LABOUR REVISION NO. 7 OF 2021

MASHAKA MIKWALO APPLICANT

VERSUS

SANTA KAGWA SECONDARY SCHOOL RESPONDENT

(Arising from the award of the Commission for Mediation and Arbitration for Rukwa in

Labour Dispute No. CMA/RK/SMB/03/2021)

(Ngaruka Oscar. W. Arbitrator)

JUDGMENT

Date: 04/04 & 03/06/2022

NKWABI, J.:

The applicant is inviting me to reprove the award of the Commission for Mediation and Arbitration for Rukwa region. He was awarded T.shs 400,000/= as his salary arrear for the month of December, 2020 by the CMA. The rest of the reliefs he claimed for were dismissed.

It seems to me, the applicant was employed on a two years term contract but subject to one year probation. Prior to the completion of the 1st year, the probation year, the employer intimated to him through a letter that she would not proceed with granting him the next year in employment. Thus,

the employment was terminated. The applicant lodged a labour dispute in CMA Rukwa claiming for T.shs 11,379,385/=, against the respondent for unfair termination from employment. The claim was for:

1. Compensation for thirteen (13) months salaries from January 2021 to January, 2022 at T.shs 6,500,000/=.
2. Payment for teaching Pre-form one from November to December 2020 T.shs 400,000/=.
3. Extra duties/time T.shs 615,385/=.
4. Repatriation/ back to area of recruitment Sumbawanga to Morogoro equal to 966 kilometers 4 tones x 966 x 1000 = 3,864,000/=.
5. Certificate of service.

The applicant was piqued by the award. He filed this revision application. The justifications of the revision indicated in his affidavit are that he was terminated on the basis of operational requirement, he was dissatisfied as the respondent did not state the conditions he used to terminate the applicant and not other employees. He was also not consulted in a meeting as per the requirement of the law. Further, no sufficient notice was given to him on the termination.

The applicant is calling upon me to consider and determine the following issues, and of course, in his favour:

1. Whether the applicant termination of employment was justifiable in law.
2. Whether the issue of writing unfairness of termination of employment or breach of contract can lead to the deprivation of the applicant right in this dispute.
3. Whether the arbitrator was correct to disregard the reasons and evidence given by the applicant in the CMA trial about his termination.
4. What reliefs both parties entitled to?
5. Whether the award of the CMA award dated 17th day of May 2021 was justifiable in law.

The respondent advanced a vital resistance against the application for revision, affirming that the applicant failed to meet the requirements under the probationary time and not due to operational requirement. The applicant was consulted at different periods and meetings. He was also given sufficient

notice. The respondent prayed the application for revision be dismissed for lack of merits.

I have gone through the submissions of both parties, I have also examined the affidavits in support and in opposition of the application. Further, I have carefully gone through the evidence that is available in the CMA record. I think that the law puts it clear and in unambiguous terms on termination of employment . I have to reproduce the provisions for purpose of clarity:

Section 36 (a) (iii) of the Employment and Labour Relations Act, Cap. 366 R.E. 2019 provides:

"Termination of employment includes:- failure to renew a fixed term contract on the same or similar terms "if there was a reasonable expectation of renewal."

In my view, one could have reasonable expectation of renewal when one has performed in accordance with the expectation of his or her employer as well. The Commission for Mediation and Arbitration had this to say about the evidence of the applicant:

"Sasa mlalamikaji katika kesi yake na Ushahidi wake hakueleza wala kuonesha kuwa alikuwa na matarajio yeyote ya mkataba wake kuhuishwa. Ukisoma hata maelezo ya ufunguzi na hata Ushahidi huoni mahala ambapo mlalamikaji aliweza kuonyesha au kuibua matarajio ya mkataba kuhuishwa. Kwa yeye hakuwa na hoja za matarajio ya kuhuishwa zaidi hoja zake zilijikita zaidi katika kudai fidia ya kuachishwa kazi isivyo halali."

The respondent in her submission urged that the reason for termination was due to poor performance of mathematics subject which ruined the image of the institution hence ruined the business competition of the institution with other similar institution. She added, that was in accordance with Rule 10(7) and 8(c) of the **Employment and Labour Relations (Code of Good Practice) Rules** GN No. 42 of 2007.

Admittedly, good performance is clearly stated in the employment contract, at page 6 and paragraph 8 and 8.1. Again, it is inconceivable that an employer would terminate the employment of an employee or refuse to extend a contract where the employee has been effective in his or her work.

Now, has the applicant discharged his onus of establishing that he adhered to his contract by making sure that the school had its marks in Mathematics subject improved as per the requirement? Did he tender any evidence such as examination results to that effect? By doing that he would have established that he had reasonable expectation that after the probation period, his employer would extend the contract or keep the contract. Short of that, in my view, would be unreasonable expectation which has no blessing of the law. His failure to bring evidence as to enhanced performance of the school in mathematics subject entitles this court to accord adverse inference against the applicant as per **Aziz Abdalla v. Republic [1991] TLR 71**. In my view, the applicant failed to establish any reasonable expectation of being granted employment after the probation period.

I have gone through the evidence of the applicant he gave at the CMA, there is no where he testified that he raised the performance of the school in mathematics subject. In fact, in his being cross examined he candidly replied that he did not cross-examine in respect of the probation period. This is what he said:

Q1. Kipengele Na.5 cha CD – 1 ulikielewa

- *Ndio*

Q2. Kilisemaje?

- *Mwaka 1 wa matazamio*

Q3. Ulihoji kuhusu kipengele hicho

- ***Sikuhoji*** (*emphasis mine*)

To the contrary the witness of the respondent had these to say:

DW1 Linus Mizengo:

"... nilimuita na kuongea naye kwa mdomo kuhusiana na utendaji wake baada ya kuona hauendi vizuri, mwezi 9 nilimueleza kwamba sizani kama tutaweza kuendelea naye ..."

With the above position of the evidence on both sides, it is difficult if not impossible to fault the decision of the CMA. It is clear that the applicant's employment was terminated due to underperforming. Since the applicant was under probation period, the respondent was perfectly entitled not to proceed with the applicant as her employee. The 1st, 3rd and 5th issues are answered in the affirmative.

I also agree with the Arbitrator that the application form was also unclear on necessary information. The arbitrator was justified in making his comment on that. The 2nd issue is answered in the affirmative since parties are bound by their pleadings.


Further, there is no evidence he gave to the effect that his place of recruitment was Morogoro. Relief for expatriation cannot be granted in the circumstances. The CMA cannot be faulted on this relief.

Consequently, the application for revision is dismissed for being wanting in merits. I confirm the award delivered by the CMA. I make no order as to costs as this is a labour matter.

It is so ordered.

DATED at **SUMBAWANGA** this 3rd day of June, 2022




J. F. NKWABI
JUDGE