

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
ARUSHA DISTRICT REGISTRY  
AT ARUSHA**

**LABOUR REVISION No. 36 of 2022**

*(C/f Employment Dispute No. CMA/ARS/ARS/81/2020)*

**KAVITA SHARMA ..... APPLICANT**

**VERSUS**

**ASSOCIATED SUPPLIES LTD. .... RESPONDENT**

**JUDGMENT**

8<sup>th</sup> December, 2022 & 2<sup>nd</sup> March, 2023

**TIGANGA, J.**

In this application, the applicant seeks revision of the Award from the Commission for Mediation and Arbitration of Arusha (CMA) in Employment Dispute No. CMA/ARS/ARS/81/2020 dated 11<sup>th</sup> April, 2020 (O. Mwebuga, Arbitrator).

The application is brought under section 91 (1) (a) (b) and 91 (2) (a) (of the **Employment and Labour Relations Act**, No. 6 of 2004 (the ELRA) and Rule 24 (1), (2) (a) (b) (c) (d) (f), (3) (a) (b) (c) (d) and 28 (1) (c) (d) (e), of the **Labour Court Rules, GN. 106 of 2007** (Labour Court Rules). The application was supported by the affidavit dully sworn by the applicant

in which under its 7<sup>th</sup> paragraph the grounds for the application are narrated as follows;

- i. That, the Arbitrator grossly failed to consider the applicant's evidence tendered during the hearing hence reached to an unjustifiable conclusion that there was a fair termination.
- ii. That, the Arbitrator grossly failed to comprehend the semantic meaning of the wording in the exhibit tendered by both parties and marked as exhibits.
- iii. That, the Arbitrator erred in law and fact in failure to see the procedural and substantive issues was unfair.

The brief background that led to this dispute is to the effect that, the applicant was employed by the respondent as Customer Service Assistant and later on as a branch manager on a two years fixed term contract starting from 31<sup>st</sup> September, 2017 to 30<sup>th</sup> September, 2019. Before her contract ended, there were some inadequacies in the stock she had authorized which led to loss of Tshs 3.4 million. She was thus, extended her contract to 31<sup>st</sup> January, 2020 so that she clears the mishaps and make a clean handover. Instead of doing so, she however absconded from work, a disciplinary

meeting was conducted, she as well defaulted appearance hence the matter was forwarded to the CMA.

Aggrieved with whole procedure, the applicant knocked CMA's doors in pursuit of her right claiming that she was unfairly terminated as the reason for her absence was sickness which the respondent was aware of because she notified her. After hearing, the CMA decided in favour of the respondent that, the applicant was never terminated but rather she absconded from work.

Aggrieved by the Award, the applicant preferred the current application which was heard by way of written submissions. The applicant appeared in person and unrepresented whereas the respondent was represented by Mr. Martin Frank learned Advocates.

Supporting the application, the applicant submitted that, the CMA handed down an arbitral Award in favour of the respondent that her termination was fair which is not true. That, the respondent terminated her employment without giving chance to be heard as she was called into the disciplinary hearing on 12<sup>th</sup> March, 2020 while she had already been terminated on 05<sup>th</sup> March, 2020 which is contrary to Rule 13 of the **Code of**

**Good Practice**, GN. 42 of 2007 (hereinafter, the Code). She referred the Court to the case of **Kibobery Limited vs John Van Der Voort**, Civil Appeal No. 248 of 2021 which discouraged terminating employees without giving them right to be heard.

She went on submitting that, even the investigation regarding the alleged misconduct that led to her termination was done after she was terminated which was contrary to Rule 27 (1) of the Code. She argued that, the irregularities, omissions and errors by the CMA were material to the substantive merit of the case hence prejudiced her. She prayed that, the CMA's Award be quashed, set aside and this court orders the respondent to pay her compensation for unfair termination.

In reply. Mr. Frank submitted in respect of the 1<sup>st</sup> ground that, the applicant was availed right to be heard thus, it is not true that she was condemned unheard. Further to that, she was never terminated on 05<sup>th</sup> March, 2022 as alleged but rather she absconded work without giving notice or excuse. He averred that, the respondent tried to reach her so that she could answer about the missing stocks with no avail. That resulted into a disciplinary charge against the applicant which she was dully notified to appear in a disciplinary hearing but she did not heed to the notice. Hence,

the respondent conducted the meeting in her absentia thus, she cannot pretend that, she was not given right to be heard. Learned counsel referred the Court to the case of **National Microfinance Bank PLC vs Aizack Amos Mwampulule**, Revision No. 6 of 2013 in which the court underscored the circumstances when the employee might not conduct disciplinary hearing such as time when the complainant waives the right to be heard.

Mr. Frank did not submit on the 2<sup>nd</sup> ground regarding the exhibits because the applicant never submitted on the same as well. Regarding the 3<sup>rd</sup> ground, the learned counsel submitted that, although the applicant allege that, the CMA failed to see the procedural irregularities conducted by the respondent, she never denied being called for the hearing and defaulted appearance. She also never denied the fact that, she had constant warnings regarding violation of standard operating norms as she supplied office goods and materials without respondent's permission that led to loss of money to the tune of Tshs 3,470,000/= and loss of goods worth Tshs. 5,393,000/=. He added that, the applicant admitted to loss and although her contract expired on 30<sup>th</sup> September, 2019, she requested an extension so that she could balance her stock and make a balanced handover. The same was accepted and she was given up to 31<sup>st</sup> January, 2020 but to the respondent's

surprise, immediately after granting extension of her contract, the applicant refused to cooperate and filed the complaint to the CMA claiming unfair termination.

Mr. Frank further contended that, applicant's contract was never renewed rather it was extended so that she could finish handling over. More so, she was never terminated on 5<sup>th</sup> March, 2020 as she claimed and she failed to prove unfair termination hence, the CMA did not error in holding that there was no any element of unfair termination. To support his contention, the learned counsel cited the case of **Hidaaya Ilanga vs V.M. Manyoka** [1961] E.A. 105 where the court held that the standard of proof varies according to the gravity of the matter to be proven. He prayed that, this application be dismissed with cost.

In her brief rejoinder, the applicant reiterated her submission in chief and maintained her stance that, she was unfairly terminated.

After considering both parties' affidavits, submissions and after a thorough perusal of the records and decision of the CMA, I now proceed to determine the grounds of revision. Starting with the 1<sup>st</sup> and 3<sup>rd</sup> grounds as they carry the same substance that, the CMA erred in holding that the

termination was fair substantively and procedurally. It is undisputed fact that, the applicant had two years fixed term contracts with the respondent from September, 2017 to September 2019. However, due to some inadequacies in her stock, the applicant's contract was extended to 31<sup>st</sup> January, 2020 so that she could clear them and make a clean hand over.

According to the exhibits D2 tendered in Court by the respondent, that was a letter dated 4<sup>th</sup> March, 2020 in which the applicant was written to explain herself as to why the stock and sales were not balancing and even though she was given time to make a proper report, she was never cooperative. In Exhibit D3, the applicant wrote an email to the respondent acknowledging loss to the tune of Tsh. 3,390,000/= from the sales of January and February, 2020 and requested the respondent to offset the same through her unpaid salaries and allowances.

On 6<sup>th</sup> March, 2020, respondent replied to her that her salary was kept on hold since she did not hand over the cash book reports, hence she will be paid her dues once she paid all that she is owed and hand over the sale books. On 10<sup>th</sup> March, 2020, the applicant wrote an email to the respondent that she was not feeling well and served them with an intention to sue. On 11<sup>th</sup> March, 2020, the respondent wrote and sent her a notice to appear to

the disciplinary meeting on 12<sup>th</sup> March, 2020 but she opted not to go and proceeded to the CMA.

From this brief sequence of events and as rightly held by the CMA, the applicant was never terminated. In her evidence before the CMA, she alleged that she was written termination letter on 5<sup>th</sup> March, 2020 which she signed at her home as one Ashura, from the respondent company brought it to her. However, that is the letter which was admitted at the CMA as Exhibit D2 that she signed on 5<sup>th</sup> March, 2020. Its content reads;

***"RE: EXPLANATION LETTER***

*Please refer to the above subject matter*

*Your role as a branch manager is to supervise sales and maintain stock in the store, we have come to know that you don't deposit money after sales and the stock is not balancing.*

*Since January you were told to give explanation to why this happen but you never cooperate. As inspection of February sales report, again money from sales were not deposited and the stock does not balance.*

*For this letter, you are required to give written explanation within 24 hrs."*



She was only required to explain herself but what followed thereafter is what I have briefly summarized hereinabove. Apart from that, her contract had already ended in 30<sup>th</sup> September, 2019, she was only given an extension after she requested the same so that she can finalize and handover her reports. Rule 4 (2) of Code of Good Practice provides that;

*"Where the contract is a fixed term contract, the contract shall terminate automatically **when the agreed period expires, unless the contract provided otherwise**". (Emphasis mine)*

This implies that, applicant's contract first automatically expired on 30<sup>th</sup> September, 2019 and secondly on 31<sup>st</sup> January, 2020 after the extension time expired. What followed thereafter were the matter of follow ups as the applicant did not make the required handover even after requesting for an extension of time. In the case of **Dar es Salaam Baptist Sec School vs. Enock Ogala**, Revision No. 53 of 2009 HC Labour Division at Dar es Salaam (unreported), Rweyemamu, J. (as he then was) held that;

*"...where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise or there were no expectations of renewal, the contract would have expired automatically with no need to write a termination letter".*

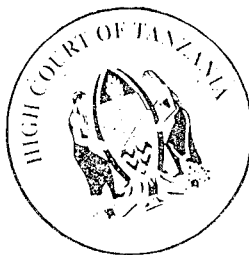
Since their contract had a specific time of expiry, I do not find any logic to hold that there were any elements of unfair termination taking into consideration the fact that, even after extension of time the applicant had failed to handover the sales books and reports as it was needed of her. What I see is the applicant's way of circumventing the losses she had caused to the respondent because up to the end of the CMA trial, I did not see anywhere in record that she made the official handover. These two grounds fail as the applicant was never terminated and the CMA did not err in holding as such.

As to the second ground, the applicant claimed that CMA failed to gather the semantic meanings of the exhibits tendered. She did not substantiate further as to what she meant by that in either her submission in chief or rejoinder. I will therefore not deal with it.

In light of the above, I find the revision to have no merit to the extent explained hereinabove. Consequently, this application is dismissed and the CMA's Award is hereby upheld. This being a Labour Dispute, I give no order as to costs.

It is accordingly ordered.

**DATED** and delivered at **ARUSHA** this 2<sup>nd</sup> day of March, 2023



  
**J.C. TIGANGA**

**JUDGE**