

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(LABOUR DIVISION)**

**SUB REGISTRY OF MBEYA**

**AT MBEYA**

**REVISION NO 22 OF 2022**

*(Arising from Labour Dispute Number CMA/MBY/Mby/82/2021AR.13)*

**WENDA HIGH SCHOOL..... APPLICANT**

**VERSUS**

**PETER MHONZWA..... RESPONDENT**

**RULING**

*Date of last order: 6/7/2023*

*Date of Ruling: 5/10/2023*

**NONGWA, J.**

The parties in this case had an employment relationship which was terminated by applicant herein on 08<sup>th</sup> September 2021, due to respondent's absenteeism from work, then respondent filed Labour Dispute Number CMA/MBY/Mby/82/2021AR.13 against the applicant claiming for unfair termination. It was the testimony from applicant side that respondent was absent from work for the period of 15 days without permission from respondent, the reason which led termination of his employment.

Respondent on his side stated to have been attending his sick wife upon permission from academic teacher. At the end of hearing, CMA found that applicant had proved that he has valid reason for termination of respondent employment contract which was absenteeism from work but the procedure for termination was not adhered that is disciplinary hearing and awarded respondent to be compensated six (6) months' salaries amounting to Tshs.6,210,000/=.

Aggrieved with decision the applicant filed revision at hand. In the notice of application and affidavit the applicant prayed for the following orders;

1. That, this honorable court to be pleased to call, examine and revise the records of the Commission for mediation and arbitration (CMA) in labour dispute number CMA/MBY/Mby/82/2021AR.13 and satisfy itself as to the correctness, legality, regularity and propriety of Award.
2. That, upon examining the records of labour dispute number CMA/MBY/Mby/82/2021AR.13, this Honorable court be pleased to set aside award and consequential orders therefrom.
3. That, this honorable court be pleased to grant any other relief as it may deem fit and just to grant.

Also invited this court to determine the following legal issues that raise from the material facts.

- (a) Whether the arbitrator rightly analyzed the evidence on record.
- (b) Whether the procedure for termination were adhered to.

At the hearing, the applicant was represented by Advocate Kamru Habibu Msonde and respondent was represented by Advocate Steward Ngwale. Application was argued by way of written submission.

The applicant submitted on both two issues at once, he submitted that Judge or magistrate or whoever presiding a case in court of law or quasi-judicial tribunal has a duty to make proper analysis of evidence on record so as to arrive at a just and fair decision. That the arbitrator never made proper analysis of evidence adduced before CMA hence arrived at erroneous decision. His submission was based on procedural fairness; it was the applicant's submission that the arbitrator failed to analyze evidence properly hence arrived at an erroneous decision. He referred the testimony of PW1, that respondent was absent from work for a period of 15 days without justification, therefore he was suspended on disciplinary grounds and summoned to appear before a disciplinary hearing. That he was formally charged for disciplinary offences and replied to the charge against him and admitted to have committed the offence for being absent

from duty for 15 days. He reproduced some part of exhibit RX4 to cement his argument.

Mr. Kamru submitted further that, it is settled law that if an employee admits the alleged misconduct, there is no need for the employer to conduct a disciplinary hearing. He referred the case of **National Microfinance Bank Plc v Andrew Aloyce** [2013] L.C.C.D 84, Hon. Rweyemum J. (as she then was), the case of **Nickson Alex v Plan International**, Revision No. 22 of 2014, High Court Labour Division at DSM and the case of **Net Health Limited vs Christopher Joseph Makasi**, Revision Application 44 of 2018, High Court of Tanzania Arusha Registry (unreported).

He argued that despite the fact that respondent admitted to commit offence, the applicant still conducted disciplinary hearing by summoning respondent's to attend the meeting. He insisted that, respondent's termination from employment was procedural and fair. He prayed this honorable court to revise CMA award and rule that the termination of respondent was substantive and procedurally fair and quash the order of payment of compensation made by arbitrator.

On reply, the counsel for respondent, submitted that, the arbitrators analysis of evidence on record and procedures for termination was not



adhered by the applicant before terminating respondent. He submitted that the employer discharged her burden as provided under **section 39 of the Employment and Labour Relation Act** [Cap 366 R.E 2019]

He argued that the learned counsel for the applicant based his submission on admission as stipulated on exhibit RX4, but there must be certainty on what was alleged and what was admitted. That from the whole evidence adduced at the commission during the trial, nowhere complainant admitted that he extended 15 days but respondent apologized, if the Academic Officer did not table before the applicant, the request for extension of leave and yet has been terminated based on absence for 15 days.

He contended that, what was being admitted by the respondent was superficial and unclear to be termed admission as it follows therein with qualified explanations as why he extended the leave days of which the reason was just and fair to extend time for leave once the information was tabled by academic office. He referred the case of **Quality Laboratory Tanzania Limited vs Shabani Hassan**, Labour Revision No. 24 of 2014 High Court of Tanzania Labour Division at Mbeya (unreported). He submitted that what complainant did is to

acknowledge the facts on his absence for 15 days but not without justification. He referred the case of **SBC Tanzania Ltd vs Fanuel Haule** Revision 66 of 2013 High Court of Tanzania Labour Division at Mbeya (unreported). He insisted that no disciplinary proceedings that show how respondent admit the said misconduct.

On the other hand, respondent submitted that arbitrator failed to pass adequate compensation after the findings that the respondent employment comes to an end as the proper computation was to award the remaining period of contract.

The second issue was the applicant's reliefs, the applicant alleged that the arbitrator erred in awarding the applicant six (6) months' salary, the respondent prayed for salaries of the remaining period of contract of which amounted to a tune of Tshs. 28,980,000/= being a salary of 28 months. It is an established principle that the compensation for unfair termination of fixed term employment contract is the remaining period of that contract. He referred the case of **Benda Kasanda Ndasi vs. Makufuli Motors Ltd**, Rev. No. 25 of 2011 HC. DSM (unreported) where it was held that, the circumstances when termination is unfair and is of a fixed terms contract, the award of compensation of remaining period is appropriate.

I have considered the records on the case file, applications and submission made by parties, I will discuss both two issues raised in affidavit collectively.

In the case of **Tanzania Revenue Authority v. Andrew Mapunda**, Labour Revision No. 104 of 2014, the court stated the established principal for termination of employment to be considered fair, it should be based on valid reasons and fair procedure. The issue is whether procedure for termination of respondent's employment was fair.

The applicant stated that, there was no need to conduct disciplinary hearing against respondent because he had admitted to commit offence but still applicant conducted that disciplinary hearing. In the case of **National Microfinance Bank Pls v Andrew Aloyce** cited by applicant it was clear that the respondent did not deny the misconduct he was charged with of operating customers' accounts in their absence, rather he attempted to explain it away. In view of the respondent above admission, there was no need for the employer to call witness to prove the misconduct as rightly pointed out by the applicant. It was found contrary to the arbitrator's conclusion that, failure to call witnesses in those circumstances did not amount to procedural irregularity or denial of right to be heard.

I have gone through exhibit RX4 which was referred by applicant to cement his argument that respondent admitted to commit offence. I reproduce some parts of exhibit RX4;

*"On August 2021, I asked permission and allowed by Head master from 06<sup>th</sup>/ 08/2021 to 16<sup>th</sup> /08/2021 through permission form whereby I went to Arusha attending my wife who was serious sick.*

***From 17<sup>th</sup> /08/2021 I prolonged the permission because the health of my wife was very tense, hence I had no alternative. I communicated with academic office about my issue. I am very sorry for these 15 days which I extended if were not tabled in your office by my academic office. I ask for an apology"***  
(emphasize is mine)

The applicant referred this exhibit and stated that respondent admitted to commit offence that is why he asked for apology, at the same time respondent referred the same exhibit and stated that respondent asked for apology if the Academic Officer did not table the application for extension of leave.

Upon reading between the lines of bolded part, I agree with respondent counsel that respondent apologized if the application for extension of leave was not tabled by Academic Officer to the responsible



Officer and not otherwise because such exhibit is clear. I find that the case cited by applicant above is distinguishable with this case at hand hence inapplicable.

As regards to contention that disciplinary hearing was conducted against respondent, Rule 13 of Employment and Labour Relations (Code of Good Practice) G, N No. 42 of 2007 provides for fairness procedure to be considered on termination of employment. The law is very clear that; employer shall conduct an investigation to ascertain if there are grounds for a hearing to be held. Whether a hearing is to be held, the employer shall notify the employee of the allegations using a form and language that employee can reasonably understand. Where an employee unreasonably refuses to attend the hearing, the employer may proceed with the hearing in the absence of the employee.

Going through court record, I find that the applicant witness (Daniel Fidelis Mwapome), on 3/9/2021 witnessed respondent being given a letter which required him to attend disciplinary hearing on 6/9/2021 but respondent never attended that disciplinary hearing, then disciplinary committee conducted hearing after being satisfied that respondent has information and has not attended without reason. That letter was

admitted as an exhibit RX5. Respondent on his side stated that he was not called to attend disciplinary hearing as alleged by applicant.

Going through exhibit RX5, I find that the same was not signed by respondent to acknowledge that he had received it. When the witness was cross examined by respondent's advocate concerning the date respondent received that letter, he replied that he signed on dispatch but that dispatch was not tendered to prove the allegation, so are the proceedings of the alleged disciplinary hearing which were even not tendered during hearing.

In that regard I find that there was no evidence tendered to prove that respondent was notified to attend that disciplinary hearing, also no evidence to prove that disciplinary hearing was conducted, in that respect I agree with CMA findings that procedure of termination of employment was not followed.

Respondent on his submission also complained that arbitrator failed to pass adequate compensation. It is my opinion that, if respondent was not satisfied with compensation which he was awarded he was supposed to appeal, failure to appeal simply means satisfied with compensation he was awarded.

For reasons I have already stated above, I find no reason to depart from the findings of CMA. Application lacks merit, it is dismissed without costs.



  
**V.M. NONGWA**  
**JUDGE**

DATED and DELIVERED at MBEYA this 5<sup>th</sup> October, 2023 in presence of Mr. Felix Kapinga and Mr. Ipyana Mwantonto, learned counsels for both sides.

  
**V.M. NONGWA**  
**JUDGE**