

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB - REGISTRY OF SHINYANGA
AT SHINYANGA**

LABOUR REVISION NO. 2 OF 2022

*(Arising from the Commission for Mediation and Arbitration at Shinyanga
in CMA/SHY/88/2021)*

1. NICHOLAUS ELITI
2. PASCHAL DINHO
3. WILSON FABIAN }**APPLICANTS**

VERSUS

BUGISI VOCATION TRAINING CENTRE.....RESPONDENT

JUDGMENT

2nd October, 2023 & 30th January, 2024.

S.M. KULITA, J.

This application has been filed by the Applicants by way of chamber summons in terms of sections 91(2)(a)(b), section 91(4)(a)(b) and section 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004 and Rule 24(1)(2)(3) and Rule 28(1)(a)(b)(c)(d)(e) of Labour Court Rules GN. No. 106 of 2007 seeking for revision on the decision

and orders of the Commission for Mediation and Arbitration (CMA) at Shinyanga in CMA/SHY/88/2021. The application is supported with an affidavit sworn by the applicants on 12th April, 2022.

In a nut shell, facts of the case, as can be transpired in the record is that, the applicants herein had been employed by the respondent as Teachers. In their claim, they said that, as Teachers, they were also engaged in special training assignment with Red Cross and ATC projects for training students. After the projects, the applicants claimed for payments on the trainings which were conducted at Bugisi Vocational Training Centre (VTC) and the overtime payment which arose during the Red Cross training. As the respondent never paid the said claims, the applicants resorted into referring the dispute to CMA which decided that, the applicants failed to prove the case at the required standard.

The applicants' application is premised on the centered ground that, the arbitrator has failed to properly evaluate the evidence on record that led him to reaching into the wrong decision that the applicants have failed to prove their case at the required standard.

On 22th August, 2023 the matter was scheduled for hearing through written submissions. Mr. Innocent Bernard, Advocate from M/S

Rugaimukamu & Kisigiro (Advocates) Law Firm of Mwanza, represented the respondent, whereas the applicants stood unrepresented.

In their joint submissions the applicants stated that, the working hours according to their contract starts at 8:00 am and ends at 3:30 pm. They also stated that, the collage schedule shows that, extra hours start from 4:30 pm to 3:30 pm. On these premises, they wondered as to why they should not be paid for overtime. The applicants attached their list of documents to be relied upon in their written submissions.

In the reply thereto, Mr. Innocent Bernard, Advocate, contended that, the act of the applicants of attaching list of documents to be relied upon at this stage, revision, amounts to introducing new evidence at the revision stage, which is not correct. Again, he stated that, the applicants had also annexed exhibits at the institution of their application at the CMA, but they never tendered them during the hearing. On those premises Mr. Innocent stated that, both annexures should not be referred in this application.

Further, Mr. Innocent Bernard pressed that, the applicants failed to provide an agreement entered between the two parties on overtime, hence failed to discharged their duty of proving their case at the required standard.

Upon earnestly gone through both parties' pleadings, submissions and the available records, and upon taking full consideration of them, I have come up with the issue to be determined being, *whether the applicants managed to prove their case at the CMA at the required standard.*

In the applicant's claim, this courts expects them to prove that on the existence of the issue of overtime and the issue of being involved in the Red cross and ATC projects.

Concerning the issue of overtime, **section 19(3) of the Employment and Labour Relation Act** provides that; -

"19(1) Subject to the provisions of this Sub-Part, an employer shall not require or permit an employee to work more than 12 hours in any day.

2.....N/A.....

(3) Subject to this Sub-Part, an employer shall not require or permit an employee to work overtime-

(a) except in accordance with an agreement"

On the dictates of the above cited provision of the law, it follows therefore that, for the applicants to succeed in their claim for the overtime payment, there should be an agreement entered between them as employees and the Respondent as the employer, to work for extra hours a day. Such agreement should have been tendered to court for verification and proof of their case.

I went through the CMA record but I have not managed to see it having been tendered to the commission as exhibit. Rather, the testimonies of the applicants themselves reveal that, they never entered an agreement with the Respondent for the overtime working hours. In absence of that agreement as required by the afore cited provision of the law, there is nowhere that we can say with certainty that, the applicants have managed to prove this claim.

On the issue of being engaged in the Red Cross and ATC projects, in their testimonies, there is nowhere in the proceedings which show that the applicants tendered any agreement to prove their involvement to the said projects. At page 6 of the typed proceedings of the CMA, one of the applicants, Wilson Fabian who is the 3rd Applicant herein is seen to have testified that, they did not enter any contract on the special projects with the ATC and Red Cross projects.

If no agreement entered, then every Teacher who happened to be at the Bugisi Vocation Training centre, can claim for such payment even when that Teacher was not engaged in the projects.

On these premises, it follows therefore that, the applicants themselves failed to prove their case at the required standard. On that account, I am firm that, there is nothing to fault the trial Commission. I thus proceed to **dismiss** the applications for being unmeritorious.



S.M. KULITA
JUDGE
30/01/2024

DATED at **SHINYANGA** this 30th day of January, 2024.



S.M. KULITA
JUDGE
30/01/2024