

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

REVISION NO. 566 OF 2016

SANGIJA JOSEPH MASAAGA.....APPLICANT

VERSUS

ULTIMATE SECURITY (T) LTDRESPONDENT

JUDGEMENT

Date of Last Order: 27/02/2018

Date of Judgement: 18/05/2018

L.L.Mashaka, J.

This application is for revision of the award issued by the Commission for Mediation and Arbitration [herein referred as CMA] on 17/11/2016 when a finding of unfair termination was reached. The application is by Notice of Application, Chamber Summons and supporting affidavit deposed by the applicant under Section 91(1)(a)(2)(a),(b) and (c) of the Employment and Labour Relations Act No. 6 of 2004, Rule 24(1),(2)(a)(b)(c)(d)(e)(f),(3)(a)(b)(c)(d), Rule 28(1)(b)(e) of the Labour Court Rules, Government Notice 106/2007.

During hearing the applicant was represented by Mr. Shaban A. Kipingu, Personal Representative of own choice and Mr. Isaya Maiseli from ATE represented the respondent.

Mr. Kipingu, Personal Representative submitted that, the applicant has filed this application by notice of application, chamber summons and supporting affidavit by one Sangija Joseph Masaaga.

That the applicant was aggrieved by the decision by Hon. Mpapasingo, Arbitrator delivered on the 17/11/2016, whereas in the award Hon. Arbitrator erred in the reliefs granted to the applicant, failing to consider other terminal benefits claimed by the applicant. That the applicant was only paid Tshs. 350,000/- as notice, compensation one month and fare back to Mwanza.

He argued that the applicant was aggrieved for not being paid other benefits like leave for 2015, that the employer did not give him the annual leave. Also the compensation was supposed to be 12 months and he was granted less as per Section 43(1)(a) (b)(c) of Act No. 6 of 2004 together with Section 44 of same Act. That Hon. Arbitrator granted the applicant his dues under Section 43(1)(a) and failed to grant the benefits provided under Section 43(1)(b) and (c) of Act No. 6 of 2004. He further argued that the employee was to be paid fare back to his place of recruitment but was not paid subsistence allowance. Since the applicant was aggrieved by the award he has not yet received any payment.

He prayed to the Court as per Section 44(1)(a)(b)(c)(d)(e) and (f) of the Act No. 6 of 2004 to grant the applicant his benefits.

In response, Representative for the respondent argued that Hon. Arbitrator delivered a fair and legal award after considering the application and prayers under CMA Form No. 1 filed by the applicant as per Section

88(1) of the Employment and Labour Relations Act No. 6 of 2004. That in CMA Form No. 1, there was no prayer for leave payment because the applicant knew that he had no leave arrears from his employer.

That on the issue of compensation, Hon. Arbitrator did award one month compensation because the applicant had a fixed term contract under Section 14(1)(b) of Employment and Labour Relations Act No. 6 of 2004, that the said fixed contract had one month remaining to complete the 2 years fixed term contract.

And that on the claims for transport fare, Hon. Arbitrator considered the evidence adduced at the CMA as the evidence established that place of recruitment was Dar es Salaam and not Mwanza.

He lastly prayed to the Court to confirm the award of the CMA, as it was fair and just.

In rejoinder Personal Representative for the applicant submitted that the applicant was recruited from Mwanza and not Dar es Salaam, that is why Hon. Arbitrator awarded the transport fare to return to Mwanza.

That the applicant had a fixed term contract of 2 years and the contract was to end in December 2015, but he could not remember the date.

He lastly prayed to reiterate his submission in chief and their prayers be granted.

The issue for determination after hearing submissions by both parties is what are the reliefs entitled to parties after Hon. Arbitrator reached a

finding of unfair termination since none of the parties dispute the validity or fairness of termination be it substantive or procedural.

Section 40(1) of the Employment and Labour Relations Act, No. 6 of 2004 provides that:

"...S. 40 (1) If an arbitrator or Labour Court finds a termination is unfair the arbitrator or Court may order the employer:-

- (a) To reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination; or*
- (b) To re-engage the employee on any terms that the Arbitrator or Court may decide; or*
- (c) To pay compensation to the employee of not less than twelve months' remuneration."*

After making a finding of unfair termination, Hon. Arbitrator ordered payment of one month salary in lieu of notice, one month salary for the remaining period for the expiry of the fixed term 2 years contract and transport fare from Dar Es Salaam to Mwanza.

The contention by the applicant that Hon. Arbitrator failed to grant other reliefs prayed by the applicant in CMA Form No 1, as claimed by the applicant is severance pay for 4 years, one month Notice, ten days remaining on the end of the contract, fare from Dar to Mwanza,

subsistence allowance (posho ya safari) and transport costs for his baggage weighing 3.3 tons. Hon. Arbitrator ordered payment of one month salary, fare and one month salary for breach of fixed term contract.

It has been the holding of this Court that after making a finding of unfair termination Hon. Arbitrator has to grant appropriate remedies according to the law even when not prayed for by the applicant, see the case of **Tanzania Revenue Authority Vs Godfrey Kajetani Dimoso**, Revision No. 62 of 2015, HCLD at DSM, [Unreported] Mipawa,J (as he then was) at pages 12-13, where the Court held and emphasized that CMA Form No. 1 cannot be taken to be like a plaint in normal civil cases, that the Arbitrator cannot be confined to only grant what is in CMA Form No. 1 rather the provisions of the laws shown above. Therefore Hon. Arbitrator has powers therefore to grant reliefs even not pleaded for, when he makes a finding of unfair termination.

However, the applicant did not adduce evidence at the CMA on payment for annual leave for Hon. Arbitrator could not in any manner know whether the employee had accrued leave or not and whether out of time or not. On the grant of severance allowance Hon. Arbitrator would not grant the same on the reason that the employee had not met the requirement of the law under Section 42(2)(a) of the Employment and Labour Relations Act No.6/2004, that the applicant's contract of employment was terminated before he completed 12 months continuously working with the respondent employer, the contract was a fixed term contract.

On the payment of fare to Mwanza as the recruitment place, according to Mkataba wa Ajira Exhibit P1 at Clause 2 "Mahali pa Kuajiriwa" shows Dar es Salaam and not Mwanza as alleged by the applicant. Hence proved the applicant's recruitment place was Dar es Salaam and therefore he does not qualify to be paid any fare to Mwanza.

This Court finds the application for revision devoid of merit, Hon. Arbitrator was right to award the said reliefs after he found termination of employment on a fixed term contract unfair.

The application for revision is dismissed.

It is so ordered.



L.L. Mashaka

JUDGE

18/05/2018