

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION NO. 328 OF 2019

BETWEEN

SHEIKHAT HISSA ISLAMIC SEMINARY APPLICANT

VERSUS

ABDALLAH HARUNA KITUPE1ST RESPONDENT

MUSSA JAMES MERAL2ND RESPONDENT

ZUHURA S. JILLAH3RD RESPONDENT

JUDGMENT

Date of Last Order: 21/05/2020

Date of Judgment: 24/07/2020

S.A.N. Wambura, J.

Aggrieved by the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] which was delivered on 20/02/2018, the applicant **SHEIKHAT HISSA ISLAMIC SEMINARY** has filed this application under the provisions of Sections 91(1)(a)(b), (2)(a)(b), (4)(a)(b) and 94(1)(b)(i) of the Employment and Labour Relations Act, 2004 and Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) and 28(1)(c)(d)

(e) of the Labour Court Rules 2007 GN No. 106 of 2007 praying for the Orders that:-

- i. The Honourable Court be pleased to revise and set aside the Award and an order issued by Hon. Kachenje, J.J.Y.M. Esq. Arbitrator in Commission for Mediation and Arbitration on 20th day of February, 2018 in Dispute No. CMA/DSM/KIN/R.107/2017.*
- ii. The Honourable Court may having set aside the Award and the order and be pleased to determine the dispute in the manner it considers appropriate.*

The application is supported by an affirmed affidavit of **MS: MWANAHAWA SAID RASHID**, the Administrative Officer of Tanzania Islamic Centre.

The respondents **ABDALLAH HARUNA** (1st respondent), **MUSSA JAMES MERAL** (2nd respondent) and **ZUHURA S. JILLAH** (3rd respondent) filed a joint counter affidavit challenging the award.

With leave of this Court, the matter was disposed of by way of written submissions. I thank both parties for adhering to the scheduled and for their written submissions.

The brief facts of this matter are that the respondents were employed by the applicant a school allegedly run by Tanzania Islamic Centre (TIC) as Teachers on various dates between March 2008 and December, 2016 when they were terminated due to financial constraints faced by the applicant.

Dissatisfied the respondents filed a complaint at CMA which found in their favour. Aggrieved the applicant has now filed this matter seeking to revise CMA's award.

It was submitted by the applicant that the Arbitrator acted illegally and with material irregularly by:

- (i). Failing to evaluate the evidence on record and ruled that there was no proof that the respondents termination was due to operational requirements. That there was no evidence to prove that the respondents were notified of the same contrary to Exhibit SHIS-1. That the respondents had been paid their terminal benefits as evidenced by the payment vouchers admitted as Exhibit SHIS2.
- (ii). Failing to realize that the respondents filed the dispute against a body which did not have legal personality and without joining the Registered Trustees in the matter contrary to Section 8(i)(b) of

Trustees Incorporation Act No. 10 of 1999 RE 2019. They cited the case of **Chande Roman Shikonyi Vs. Estomy A. Baraka & 40 others**, Court Application No. 4 of 2012 (CA) to that effect.

In reply the respondent submitted that:-

- (i). The evidence tendered by both parties was properly recorded, weighed and evaluated. Thus the arbitrator found that they were unfairly terminated substantively and procedurally. That the Audit financial statement was never disclosed to the respondents prior to their termination. So the award was properly procured as provided for under Section 88(4)(b) of Employment and Labour Relations Act 2007 and Rule 9(3) of Employment and Labour Relations Act (Code of Good Practice) Rules.
- (ii). On the contention that the applicant is a non-existing party, they submitted that this was merely an afterthought as the same was never raised at CMA and so should not be relied upon at this stage.

I have however noted that the submissions are not dated so have to be expunged from the court record.

I will start with the ground that the respondent did not sue a proper party and that T.I.C. was not joined as a respondent at CMA. I find no merit in this ground because;

- (i) The same was not so raised at CMA it can therefore not be a ground at this stage. But even if it was so raised;
- (ii) According to DW2 the school was no longer in the hands of the Institution meaning TIC. That their source of income was through rent collected from their shops/frames and school fees.
- (iii) It is on record that the applicant was the hiring and firing authority.
- (iv) Moreover according to the provision of Order I Rule 9 no suit shall be defeated merely by non-joinder of parties and as was also held in the case of **Abdi M. Kipoto Vs. Chief Arthur Mtoi**, Civil Appeal No. 75 of 2017.

Now as for the evidence adduced I find that the arbitrator erred in finding that the 1st respondent was unlawfully terminated. This is because his contract of employment was not renewed though he alleged to have signed his part of the contract.

Likewise the 2nd respondents contract was alleged to expire in April, 2017 and he was terminated in December, 2016. This means all the respondents were on fixed terms of contracts. They are thus not covered

by the provisions of Section 37 of Employment and Labour Relations Act but Sections 14(1)(b) and 41 of Employment and Labour Relations Act.

As the contract of the 1st respondent had expired and had not been renewed then he was entitled to his terminal benefits as provided for in his contract which was not contested by the applicant. According to Exhibit SHIS1 which are payment vouchers the 1st respondent was paid his gratuity and Saccos contributions being Tshs. 417,107/35 in total. He thus has no further claims.

The 2nd respondent also did not tender the 2nd contract which was alleged to end in April 2017 to prove the same. But since the applicant failed to challenge the allegation by producing the relevant documents as per Section 96 (1)(a) of Employment and Labour Relations Act then I Order that he be paid the salary of the four months in breach of the contract as provided for by the law. It is on record that he was paid his gratuity on completion of the 1st contract. He is thus entitled to four months' salary of the period of his remaining contract being Tshs. 660,000 x 4 = 2,840,000/= in total.

The 3rd respondent was properly awarded Tshs. 2,451,070/= by the Arbitrator. She ought to be so paid accordingly as her contract was also prematurely terminated.

This was also so held in the case of **Good Samaritan Vs. Joseph Robert Sevari Munthu**, Lab Rev. No. 165 of 2011 where the Court held that:-

"when an employer terminates a fixed term contract, the loss of salary by employee of the remaining period of the unexpired term is a "direct, foreseeable and reasonable" consequence of the employer's wrongful action. Therefore, in this case probable consequence of the applicant's action was loss of salary for the remaining period of the employment contract which was 21 months..."

[Emphasis is mine]

As the 1st and 2nd respondents were also on fixed terms of contracts they are also not entitled to be paid severance allowances.

In the circumstances, I allow the application to the extent stated herein above only.

S.A.N. Wambura
JUDGE
24/07/2020

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Date: 24/07/2020

Coram: Hon. F.A. Mtarania, Deputy Registrar

Applicant: }
For Applicant: } Mr. Hassan Rasul Advocate for Mtumwa Kiondo
Advocate

Respondent: }
For Respondent: } Present in person

CC: Lwiza

COURT: Judgment delivered today in presence of Mr. Hassan Rasul who is holding brief for Mr. Mtumwa Kiondo for the Applicant and the Respondent in person.


F.A. Mtarania

DEPUTY REGISTRAR

24/07/2020