

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

**REVISION NO. 416 OF 2019**

**BETWEEN**

**FEZA INTERNATIONAL SCHOOLS ..... APPLICANT**

**VERSUS**

**DORCUS W. NKOYI ..... 1<sup>ST</sup> RESPONDENT**

**LENJEN CO. LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*Date of Last Order: 14/05/2020*

*Date of Judgment: 10/07/2020*

**S.A.N. Wambura, J.**

Aggrieved by the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] delivered on 27/03/2019, the applicant **FEZA INTERNATIONAL SCHOOLS** has filed this application under the provisions of Sections 91(1)(a), (2)(b)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004, Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d), (11)(b) and 28(1)(d)(e)

of the Labour Court Rules, GN No. 106 of 2007 praying for following Orders:-

*(a) That this Honourable Court be pleased to call for records on proceedings for Labour Dispute No. CMA/DSM/KIN/R.1300/17/36 between **Dorcus W. Nkoyi and Lenjen Co. Limited & Another** decided by Hon. M.S. Mbeni, Arbitrator on the 22<sup>nd</sup> March, 2019 at Dar es Salaam and revise the proceedings, orders and award, and quash the orders and award therein and or make such orders as it deems fit.*

*(b) Any other relief(s) that this Honourable Court may deem fit and just to grant.*

The application was supported by a sworn affidavit of Alfred Mbago the Principal Officer of the applicant as indicated in the notice of application.

The 1<sup>st</sup> respondent **DORCUS W. NKOYI** challenged the application in her counter affidavit while the 2<sup>nd</sup> respondent did not file a counter affidavit.

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

Submitting on the two grounds filed for revision the applicant stated that the 1<sup>st</sup> respondent was initially employed by the applicant as a nurse. Later on the 2<sup>nd</sup> respondent took over the applicants obligations in relation to all the employees as per Exhibit LC1. It was therefore wrong for the Arbitrator to conclude that the 1<sup>st</sup> respondent was employed by the applicant whereas there was evidence to prove the contrary.

That since the 2<sup>nd</sup> respondent undertook the liability of the applicant as per their agreement, then the 2<sup>nd</sup> respondent was legally liable to pay for the award being Tshs. 9,573,808/= and not the applicant.

In reply the 1<sup>st</sup> respondent averred that:-

- (i). She was employed by the applicant as per Exhibit D1 and that the arrangement between the applicant and the 2<sup>nd</sup> respondent was not known to her.

That according to Exhibit LC1, the 2<sup>nd</sup> respondent was to be a mere managing agent and the 1<sup>st</sup> respondent was to abide to the rules and policies of the applicant.

That the Arbitrator was convinced that the criteria as to who is an employee as provided for under Section 61 of the Labour Institution Act, 2007 was met so it was right for him to conclude that the applicant was the employer of the 1<sup>st</sup> respondent. Therefore she should not be left to escape from her responsibilities.

- (ii). That the provisions of Section 40 of ELRA clearly provides that an employer who has caused the employment of the employee to be terminated unfairly has to be condemned for among others to pay compensation. So again the applicant cannot escape from such an obligation.

In his reply to the applicant's submissions the 2<sup>nd</sup> respondent prayed to adopt the contents of the counter affidavit sworn by Jennifer Mmasi at CMA and submitted that:-

- (i). The 1<sup>st</sup> respondent was employed by the applicant as of 01/08/2016 up to when she was terminated. That she was controlled, supervised and administered by the applicant who also provided her with work equipments as a nurse.

That they were contracted by the applicant to provide support and advise the applicant in respect of legal and human resources practice. The legal position and responsibilities of the applicant as an employer never changed as per Section 61 of LIA.

- (ii). That the applicant has not challenged CMA's award nor the procedures followed meaning he accepts that it was well handled. Therefore the award was appropriately procured. They thus prayed for the application to be quashed and the award not to be revised.

It is worth noting that the 2<sup>nd</sup> respondent's counter affidavit filed at CMA cannot be used at this Court for after being served with a copy of the application they had to file another counter affidavit.

Now having gone through the record it is obvious that I am supposed to respond to the two issues raised by the applicant as there is no dispute that the 1<sup>st</sup> respondent was unfairly terminated. The issues are:-

- (i) Whether it was legally proper for the Arbitrator to conclude that Dorcus (1<sup>st</sup> respondent) was employed by the School (applicant).
- (ii) Whether it was legally proper for the Arbitrator to Order the School (applicant) to pay Dorcus (1<sup>st</sup> respondent) the sum of Tshs. 9,573,808/=.

Infact after deciding on the 1<sup>st</sup> issue then the 2<sup>nd</sup> issue is an automatic response to it.

It is on record that the 1<sup>st</sup> respondent was employed by the applicant (School) on 01/08/2016 as per Exhibit D1. The Applicant and Ishik Medical and Education Foundation entered into a contract on 01/06/2016. The specifications of the work as provided for under Item 1 includes:-

*1.1. The parties agree that the general scope and results of the Services to be completed by Lenjen Company Ltd shall be and only be on the following Human Resource Related areas.*

*Transfer of Employers Liability, Recruitment, Payroll, End Service, Final Dues and Severance processing.*

*1.2. Ishik Medical and Education Foundation should be informed in all cases related to Recruitment, Payroll, End Service, Final Dues and Severance processing before payments to be done to Lenjen Company Limited.*

*1.3. In case of termination of any worker the time will only be one month from first alerts from Ishik Medical and Education Foundation.*

As the applicant is one of the Institutions so covered the 1<sup>st</sup> respondent signed another contract of employment with the 2<sup>nd</sup> respondent on 05/10/2017 (LC1). On 06/10/2017, the applicant wrote a letter to the 2<sup>nd</sup> respondent complaining of the performance of the 1<sup>st</sup> respondent calling for her suspension.

On 13/10/2017 the 2<sup>nd</sup> respondent wrote a letter to the 1<sup>st</sup> respondent notifying her to attend a disciplinary hearing. It was scheduled to take place on 18/10/2017 as per Exhibit D3. However, the said hearing was not conducted as the applicant did not enter appearance. The 1<sup>st</sup>

respondent was terminated orally by the Principal of the applicant's School. She was asked to handover the office keys, which she did and left.

It is on record that they had never told her that they were not satisfied with her performance nor warned. She knew of the same when served with a letter of termination which if tendered at CMA, I was not able to allocate.

From the above facts it is obvious that though the 1<sup>st</sup> respondent signed another contract of employment with the 2<sup>nd</sup> respondent, the same only lasted for thirteen (13) days. That it was the 2<sup>nd</sup> respondent who was paying her salary was disclosed to the 1<sup>st</sup> respondent by the applicant. However, the 2<sup>nd</sup> respondent is disputing the same.

Be it as it may, it was the applicant who served her with letters of employment and termination, meaning that the applicant was the employer of the 1<sup>st</sup> respondent as per Section 61 of LIA. According to the record she was hardly supervised by the 2<sup>nd</sup> respondent.

I thus find nothing to fault the Arbitrator on this finding.

Since it was the applicant who employed and terminated the 1<sup>st</sup> respondent, then they are the ones who are supposed to pay her the



decretal award. If at all there are internal arrangements between the applicant and the 2<sup>nd</sup> respondent that is for them to sort out.

I thus uphold CMA's award and dismiss the application for want of merit.

S.A.N. Wambura

**JUDGE**

10/07/2020

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**DORCUS W. NKOYI ..... 1<sup>ST</sup> RESPONDENT**

**LENJEN CO. LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**Date: 10/07/2020**

Coram: Hon. W.S. Ng'humbu, Deputy Registrar

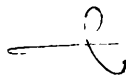
Applicant: }  
For Applicant: } Absent

Respondents:

For Respondents: Mr. Sylvester Sebastian Advocate for the 1<sup>st</sup> respondent  
also holding brief for Advocate Allen Mchaki for the 2<sup>nd</sup>  
respondent.

CC: Lwiza

**COURT:** The Judgment delivered this 10<sup>th</sup> day of July, 2020 in the presence of Mr. Sylvester Sebastian Learned Counsel for the 1<sup>st</sup> respondent who is also holding brief for Mr. Allen Mchaki Learned Counsel for the 2<sup>nd</sup> respondent and in the absence of the applicant is certified to be the true copy of the original.



W.S. Ng'humbu  
**DEPUTY REGISTRAR**  
10/07/2020