

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**  
**LABOUR REVISION NO. 217 OF 2020**  
**BETWEEN**  
**IMRAN ABDALLAH YAHAYA RUHUMBA ..... APPLICANT**  
**VERSUS**  
**MINI BAKERIES (T) LTD ..... RESPONDENT**

**JUDGEMENT**

Date of Last Order: 09/06/2020

Date of Judgment: 14/08/2020

**I.D Aboud, J**

The Applicant filed the present application seeking for revision of the ruling of the Commission for Mediation and Arbitration (herein CMA) which was delivered on 28/04/2017 in Labour Dispute No. **CMA/DSM/KIN/R.81/17** by Hon. Mahindi. P. P. Arbitrator. The application is made under the provision of section 91(1)(a) 91(2)(b) 94(1)(b)(i) of the Employment and Labour Relations Act [CAP 399 RE 2002] (herein The Act), Rule 24(1), 24(2) (a) (b) (c) (d) (e) and (f), 24(3) (a) (b) (c) (d) (e) 28(1)(a)(c)(d) and (e) of the Labour Court Rules, GN No.

106 of 2007 (herein referred as Labour Court Rules). The applicant moved the Court on the following grounds:-

- i. The Honourable Mediator erred in law and fact for failure to accept the applicant's documentary evidence tendered during the hearing of the preliminary objection which prove that the applicant was a permanent employee since 2012.
- ii. The Honourable Mediator erred in law and fact to accept documentary evidence in the hearing and determination of preliminary objection on point of law.
- iii. The Honourable Mediator erred in law and fact to hold that at the hearing of the preliminary objection the applicant conceded to be employed on 01/10/2016 which is not true.

The application is supported by the applicant's affidavit. The application was challenged through the counter affidavit of Tom Wanalisi, Respondent's Principal Officer.

Brief background of the dispute is that, the applicant was employed by the respondent as Dough maker for a permanent contract started from

01/10/2016 but he was on probation of six months. He alleged to be terminated on 17/01/2017. He then referred the dispute at the CMA for unfair termination. The respondent raised a preliminary objection at the CMA that the CMA has no jurisdiction to determine such dispute under unfair termination because he was a probationary employee. The CMA upheld the preliminary objection and dismissed the application. Aggrieved by the CMA's ruling the applicant filed the present application.

During hearing the applicant was represented by Mr. Peter Mnyanyi, Trade union Representative from TAROTWU while the respondent was represented by Mr. Pascal Teemba, Personal Representative.

Arguing in support of the application Mr. Mnyanyi submitted that, when the matter was scheduled for mediation the only pleading in the CMA's file was the applicant's Referral Form No. 1. He stated that the respondent tendered documentary evidence to prove his allegation that the applicant was employed on 01/10/2016 which was contrary to the case of **Mukisa Biscuits Manufacturing Co. Ltd Vs. West End Distributors Ltd** (1969) EA 696. He also cited the case of **Hotels and Lodges (T) Limited Vs. The Attorney General and another**, Civ. Appl. No. 27 of

2013. He stated that the trial Mediator erred in law and fact by taking fresh evidence when determining preliminary objection on point of law.

Mr. Mnyanyi further submitted that, the Hon. Mediator erred in law and fact when he decided to hold that, at the hearing of the preliminary objection the applicant conceded to be employed on 01/10/2016 which is not true. He therefore prayed for the application to be allowed.

The respondent on the other hand conceded to the applicant's application.

After considering the applicant's submission I find the issue to be determined is whether the Mediator properly determined the preliminary objection.

It is on record that at the CMA the respondent raised a preliminary objection that, the CMA had no jurisdiction to determine the dispute of unfair termination referred by the applicant because he was a probationary employee. The applicant contended before this Court that, the CMA improperly determined the said preliminary objection by requiring parties to tender new evidence.

As was decided in the case of Mukisa Biscuit (*supra*) a preliminary objection should be based on a pure point of law which require no more facts and evidence to be proved. It is apparent that the issue of jurisdiction raised by the respondent at the CMA is a pure point of law which can be raised even at the appellate stage. In my view under the circumstances of this case and the nature of the preliminary objection raised the Arbitrator properly admitted the employment contract as evidence to prove the preliminary objection.

The basis of the preliminary objection raised was from the employment contract. The applicant conceded the fact that he entered into a contract with the respondent on 01/10/2016. In the relevant contract the applicant was permanently employed however he was on probation for 6 months. It is on record the applicant was terminated on 17/01/2017 which is crystal clear that he was still on probation. Therefore, the employment contract was the relevant document to prove the fact that the CMA had no jurisdiction to determine such dispute under unfair termination.

It has been decided in number of cases that the principles of unfair termination do not apply to probationary employees. This is also the

position in the case of **Agnes Buhere Vs. UTT Micro Finance Plc**, Rev. No. 459 of 2015. Where it was held that:-

“Section 35 of our Employment and Labour Relations Act 2004 precludes also employee who are under probation from the scope of relevant provision concerning unfair termination. I concede and subscribe to the case law cited by both parties concerning the issue of probationary employees and I still hold that, that is the position of the law in our jurisprudence in labour matters which is more or less the same with the International Labour Standard of the International Labour Organization.”

On the basis of the above discussion it is my view that the Arbitrator rightly decided the preliminary objection that he had no jurisdiction to entertain the dispute before him as the applicant is not covered by section 35 of the Act. The applicant was supposed to refer to CMA the dispute about unfair labour practice but not under unfair termination which is governed by section 35 of the Act.

In the result I find the present application has no merit and the Arbitrator's ruling is hereby upheld. The CMA had no jurisdiction to determine the applicant's dispute under unfair termination.

It is so ordered.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', written in a cursive style.

I.D. Aboud

**JUDGE**

14/08/2020