

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

REVISION NO. 266 OF 2019

PETER J. MASHALA.....APPLICANT

VERSUS

STEPHANO W. SAGAYE.....RESPONDENT

JUDGMENT

Date of Last Order: 07/08/2020

Date of Judgment: 28/08/2020

Z.G. MURUKE, J.

Stephano W. Sagaye was employed by respondent on 1st day of April, 2014 as security guard and gardner, for a salary of 250,000 (two hundred fifty thousand) per month. After working for a certain period respondent abandoned the employment from 16th March, 2016 to unknown place for reason of none payment of salaries. After a period of six months, respondent,lodged complain at CMA on September, 2016.

Upon hearing the dispute, arbitrator ordered applicant to pay respondent.

- (i) 8,088,000 Tshs. being salary areas for eight months.
- (ii) Three months' salary being compensation for not following procedure.
- (iii) One month salary as notice.
- (iv) Severance pay for 2 years to the tune of 125,000.

Being dissatisfied applicant filed present revision raising following grounds for determination.

- (a) That the arbitrator erred in law and facts for awarding excessive reliefs without taking into account the fact that respondent abandoned the work.
- (b) That the arbitrator erred in law and facts for awarding reliefs which were not pleaded in CMA F1.
- (c) The arbitrator erred in law and facts for awarding the respondent benefits out of his own wrongs.

On the date set for hearing Thomas Masawe represented applicant while respondent were represented by Regina Herman, Advocate. Applicant counsel submitted that: There are contradictions, arbitrator ordered respondent to be paid 8,08000 while salary for 8 months is 2,000,000 for a monthly salary of 250,000 Tshs. There was no any procedure as respondent was the only employee, and applicant was a single employer. Being a single employer and employee there is no any other procedure can be conducted. Exhibit P1 was enough procedure for single employer and employee. Thus order that respondent to be awarded compensation for unfair termination cannot stand. The amount 750,000 granted to the applicant was not properly issued.

Issue of severance pay, according to Employment and Labour Relations Act No. 6/2004 Section 42, is an additional or incidental payments on termination. Arbitrator ordered applicant to pay 125,000 as severance pay, that is not right, because, there was no unfair termination.

Let the court also peruse court records. In totality there was no any unfair termination therefore, compensation and severance pay does not arise.

Respondent counsel on the other hand submitted that in CMA Form No. 1, respondent requested for 8,088,000 Tshs. Respondent requested, for salary areas in terms of exhibit P1, applicant admitted that he is indebted to respondent Tshs. 2, 088,000. DW1 did not dispute the amount. Section 90 of Employment and Labour Relations Act, explain clearly that, once there are clerical error on award, then person aggrieved may file an application for correction of award or error. If applicant was aggrieved, ought to have filed application for clerical errors. This court cannot correct. Respondent was unfairly terminated. Applicant ought to prove that termination was fair. Payments were being paid by one person. The award was according to the evidence. Respondent was terminated for economic reason in terms of exhibit D1, and not for any reason of respondent.

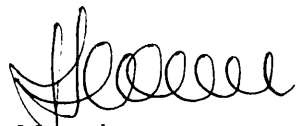
Having heard both parties submission, it is clear that, respondent was employed under oral contracts. Terms of the contract were not certain. None of the parties has been able to explain. Respondent who instituted the dispute was duty bound to prove at CMA whether he had contract with applicant and on what terms. What is in record is exhibit P1 a letter written to by applicant to the respondent requesting for one months to pay 2,088,000/= being areas of salary.

There is also evidence on record that respondent absconded his employment from March, 2016, following shifting of applicant tenant whom

they have been shearing payment of respondent salary with applicant. Such evidence has not been contradicted even during cross examination by the respondent counsel. To this court, there is nothing on record to prove unfair termination. To the contrary, it is respondent who absconded his work place to unknown area. Thus, he is not entitled to any other dues apart from salary areas of eight months and in terms of exhibit P1, not disputed by both applicant and respondent.

On procedure, respondent absconded himself. He was the only employee and applicant was the single employer. Applicant did not take any disciplinary action. He just decided to pay respondent who was claiming for areas of salaries. In totality, respondent to be paid salary areas in terms of Exhibit P1 namely 2, 088,000* Tshs, and not the amount of 8,088,000 indicated at page 13 of the award dated 22nd February, 2019. The amount of 8,088,000/= is unjustified, not backed up by records, thus quashed and set aside.

In totality applicant to pay respondent 2,088,000/= being salary areas in terms of exhibit P1. The rest of the award are quashed a set aside. Revision allowed.



Z.G. Muruke

JUDGE

28/08/2020

Judgment delivered in presence of applicant in person and in absence of respondent having notice.

A handwritten signature in black ink, appearing to read 'Z.G. Muruke', written in a cursive style.

Z.G. Muruke

JUDGE

28/08/2020