

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

AT DAR ES SALAAM

REVISION NO. 632 OF 2019

THE EXPORT PROCESSING ZONES AUTHORITY.....APPLICANT

VERSUS

MUSA FIKIRI MAHAMBI..... RESPONDENT

JUDGMENT

Date of last Order: 30/10/2020

Date of Judgment: 30/11/2020

Z.G.Muruke, J.

Respondent Musa Fikiri Mahambi, was employed by respondent as procurement specialist effective 7th October, 2010. The employment was subject to twelve months' probation period. During probation, the respondent performance and conduct fall short of what he was expected of him. On 18th October, 2011 after a year without being confirmed, the applicant's appointment and disciplinary committee found the respondent performance wanting and resolved to extend the respondent probation period for a further period of three months pursuant to provisions of clause 2.4.13(iii) of the applicants staff regulations, 2007.

On 1st November, 2011, he was granted two weeks leave to attend IDLI study in Rome Italy. On 2nd of November, 2011, respondent wrote a latter to accept leave to attend study in Italy. However, on the same day 2nd November, 2011 applicant received two letters, one dated 30th October for extension of probation period and one dated 2nd November, 2011 for termination of his employment. Respondent having returned from Italy

with his letter of termination dated 2nd November, 2011, he filed dispute at CMA on 12nd December, 2011. Upon conclusion of pleadings and other necessary procedure, following issue were registered for determination.

- (i) Whether there was sufficient reasons to terminate the services of the complainant by the respondent.
- (ii) Whether the termination procedure of the complainant service were properly followed.
- (iii) Whether the complainant suffered any damage.
- (iv) What relief(s) are the parties entitled.

After hearing both parties and their witnesses, CMA decided infavour of the respondent by ordering, **one**, applicant to pay respondent 12 months equal to 23, 291,520 at the rate of 1,998,360 per month by the time was terminated. **Two**, applicant to re-employ respondent, and **three**, respondent be re-evaluated. The decision dated 1st November, 2017 dissatisfied applicant, thus filed present revision raising seven grounds for determination clearly pleaded from paragraph 6-12 of affidavit in support of the application sworn by Sara Mwaipopo applicant principal officer.

On the hearing date, Charles Mtae, Learned State Attorney represented applicant while respondent was in person. By consent hearing was by way of written submission

Both parties complied with the schedule hence presence judgment. For reason that I will explain letter, I will not deal with merits of the case. Perusal of CMA Form No. 1 was signed by Musa Fikiri Mahambi on 5th December, 2011 as indicated at page six(6) of the same. CMA form number one, was received at Commission for Mediation and Arbitration on

12th December, 2011. Respondent was terminated from applicant employment on 2nd November, 2011. The law, rule 10 of Labour Institution (Mediation and Arbitration) GN 64 of 2007 provides time limits for referring dispute at Commission for Mediation and Arbitration as follows:

Rule 10(1) dispute about the fairness of an employee's termination of employment must be referred to the commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate.

Applicant was terminated on 2nd November, 2011, dispute was filed on 12th December, 2011 in terms of CMA form number I received, and stamped with the stamp of commission.

From 2nd November, 2011 to 12th December, 2011 is a period of 40 days. Rule 10(1) of Labour institution (Mediation and Arbitration) reproduced above provides for 30 days. From the records, respondent filed dispute at CMA out of time for 10 days, without leave of commission. To this court, commission proceeded with the dispute that was out of time. When the matter is out time commission had no jurisdiction to entertain the same. Jurisdiction is fundamental to any adjudicating authority. Without wasting much time, this court quash, proceedings and set aside award of CMA in dispute between the parties subject of this revision. Respondent should seek remedies upon following proper procedure.



Z.G.Muruke

JUDGE

30/11/2020

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VERSUS

MUSA FIKIRI MAHAMBI RESPONDENT

Date: 30/11/2020

Coram: Hon. S.R. Ding'ohi, DR.

Applicant:

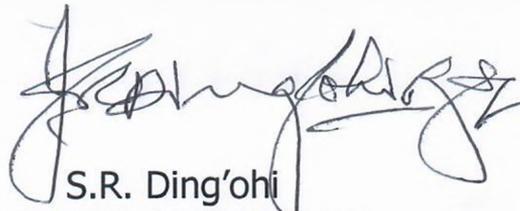
For Applicant: } Ms. Janeth Makondoo, SSA

Respondent: Present in person

For Respondent:

CC: Halima

Court: Judgment delivered this 30th day of November, 2020.



S.R. Ding'ohi
DEPUTY REGISTRAR

30/11/2020