

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO 127 OF 2019**

**MATHIAS K. MJEMA..... APPLICANT**

**VERSUS**

**KATIBU MKUU (COTWU) .....RESPONDENT**

**JUDGMENT**

*Date of Last Order 19/10/2020*

*Date of Judgment 30/11/2020*

**Z.G.Muruke, J.**

The applicant **MATHIAS K. MJEMA** being aggrieved with the award of Commission for Mediation and Arbitration (herein to be referred as CMA) in Labour Dispute no. CMA/ DSM/KIN/R.194/16 which was delivered by Hon. Kiwelu, L.- Arbitrator on 14<sup>th</sup> June,2017 in favour of the respondent, filed present application seeking to revise and set aside of the award. The application was supported by an affidavit of the applicant himself. The same was challenged by the respondent's counter affidavit sworn by Juliana Mpanduji, the respondents' General Secretary.

The brief facts leading to the present application is that, on 9<sup>th</sup> September, 2011 the applicant was elected as a General Secretary of a



trade union namely Communication and Transport Workers Union of Tanzania (COTWU) for a period of 5 years ending 8<sup>th</sup> September, 2016.

On 27<sup>th</sup> April, 2016 the COTWU National Council suspended the applicant together with other national leaders pending investigation on alleged embezzlement of a union's fund. On 29<sup>th</sup> August, 2016 the respondent convened a General Election where another General Secretary was elected. The applicant was aggrieved with the same since his tenure was supposed to end on 8<sup>th</sup> September, 2016. He referred the matter to the CMA claiming payment of his salary from suspension up to determination of their accusations. CMA's decided that the applicant was not entitled to the same since his tenure, ended after the other elected General Secretary took over the position he was holding.

The applicant was unsatisfied with the award, he thus filed the present application.

With leave of the court the matter was disposed of by way of written submission. I thank both parties for adhering with the schedule. The applicant was served by Advocate Evans Robson Nzowa, whereas the respondent enjoyed the services of Advocates Cornelius Kariwa, Frank Kilian Glory Venance and Michael Kariwa all from Kariwa & Co. Advocates.

Submitting in support of the application, on the 1<sup>st</sup> ground the applicant's counsel submitted that, the applicant was suspended on 27<sup>th</sup> April, 2016 as per exhibit A1 while holding his title as a General Secretary of the respondent. That the mandate to elect and discipline the General

Secretary, is vested on the General meeting referring Item 4 (d) of part III of COTWU (T) Kanuni na Masharti. Since he was suspended there is no any General meeting which determined the accusations of embezzlement against him, and his tenure was unlawfully terminated as he was not afforded with a right to be heard. Therefore the said meeting was unlawfully.

On grounds 2 and 3 which were jointly argued, the applicant's counsel argued that as admitted by DW1 in her evidence that the election was conducted before the expiry of applicant's tenure, the applicant is entitled to his salary since the fate of his position was undetermined from the date of the suspension. He prayed for the application to be granted.

In response, the respondent's counsel on the 1<sup>st</sup> ground submitted that, according to clause 44(a),(b) of exhibit D1 the COTWU(T) Kanuni na Masharti ya Utumishi, the applicant's contract was on a fixed term and it ended after 5 years period to wit 8<sup>th</sup> September,2015. The issue of suspension cannot confer the applicant a status of the employee even after expiry of a fixed term contract, referring the case of **National Oil (T) Ltd v Bruno Joseph**, Rev. NO.118/2008. On the 2<sup>nd</sup> and 3<sup>rd</sup> grounds, it was argued for the respondent that the applicant is not entitled to any payment as his contract came to an end after expiry of his five years tenure. They prayed for dismissal of the application.



Having considered the parties submission, records and the relevant laws, the issue for determination is whether the applicant is entitled to payment of his salary as he requested?

It is undisputed that the parties had a contractual relation of 5 year fixed term contract, which was supposed to end on 8<sup>th</sup> September, 2016. The applicant was suspended pending investigation on 27<sup>th</sup> April, 2016 and he was paid his salary up to August, 2016. It is also undeniable fact that while the applicant was on suspension the respondent held a General election on 29<sup>th</sup> August, 2016, which was prior the applicant's tenure of his position as a General Secretary came to an end. The applicant alleged that because he was suspended, he was entitled to be paid his salary until determination of his fate by the General Meeting as per Item 4(d) of COTWU(T) Kanuni na Masharti ya Utumishi, which provides for who can discipline the General secretary, to be a General Meeting.

I have cautiously gone through the records, exhibit D1, item 32 provides for entitlement of salary while on suspension, and there is no doubt that the applicant was paid the same up to August, 2016. This court is of the view that, the applicant's contract was terminated on 29<sup>th</sup> August, 2016 when General meeting was held and election was conducted, as a result his position as a General Secretary was covered by another person.

It is an established principle of law that in a fixed term contract of employment, the employee is only entitled to payment of the remaining period salary. This was emphasized in the case of **Good Samaritan v**

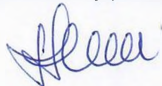


**Joseph Robert Savari Munthu**, Rev. No. 165/2011 HC Labour Division  
DSM (unreported) where the Court held that:

“When an employer terminates a fixed term contract, the loss of salary by an employee of the remaining period of the unexpired term is a direct foreseeable and reasonable consequence of the employer’s wrongful action....”

In the case at hand, as it was found by the trial arbitrator, the applicant is only entitled to 8 days salary from 1<sup>st</sup> of September,2016 to 8<sup>th</sup> September,2016. Even though his fate was not determined by the General Meeting, the applicant cannot claim salary payment while he was no longer in contract with the respondent. His status of the respondent’s employee seized on 8<sup>th</sup> September, 2016, hence not entitled to payment of salary. He ought to have established other claims against the respondent but not salary entitlement. On such basis I uphold the CMA’s award.

Basing on the above findings the application is dismissed for want of merit.



Z.G.Muruke

**JUDGE**

30/11/2020

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

**REVISION NO. 127 OF 2019**

**MATHIAS K. MJEMA ..... APPLICANT**

**VERSUS**

**KATIBU MKUU (COTWU) ..... RESPONDENT**

**Date: 30/11/2020**

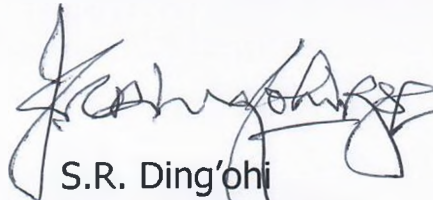
Coram: Hon. S.R. Ding'ohi, DR.

Applicant: }  
For Applicant: } Mr. Kariwa, Advocate

Respondent: }  
For Respondent: } Absent

CC: Halima

**Court:** Judgment delivered this 30<sup>th</sup> day of November, 2020.



S.R. Ding'ohi  
**DEPUTY REGISTRAR**

30/11/2020