

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

**AT MOROGORO**

**REVISION NO. 40 OF 2019**

**LUCIA I. SIMFUKWE.....APPLICANT**

**VERSUS**

**'B' ONE LODGE.....RESPONDENT**

**JUDGMENT**

*Date of last Order: 26/11/2020*

*Date of Judgment: 08/12/2020*

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

Applicant was employed by respondent as house keeper on 15<sup>th</sup> January, 2011 at a salary of 130,000 Tshs per months. She alleged to be terminated orally by respondent on 26<sup>th</sup> May, 2017, without following procedure, thus filed dispute at CMA on 20<sup>th</sup> June, 2017, claiming for;

- |       |                                   |                 |
|-------|-----------------------------------|-----------------|
| (i)   | Salary for month of May           | Shs. 130,000    |
| (ii)  | Notice in lieu of salary          | Shs. 130,000    |
| (iii) | Leave pay for 2016/2017           | Shs. 151,667    |
| (iv)  | Pension for 6 years               | Shs. 231,000    |
| (v)   | Certificate of service and,       |                 |
| (vi)  | 12 months' salary as compensation | Shs.1,560,000/= |

Upon hearing both parties, commission dismissed all the claim except salary for month of May, on the ground of failure by applicant to prove that respondent terminated her. Respondent was ordered to pay applicant her may salary within 14 days from the date of the decision.

Applicant was dissatisfied, She filed present revision raising four grounds of revision in terms of paragraph 10,11,12 and 13 of affidavit in support of revision namely:

- (i) That commission did not consider applicant evidence on one day off amongst 4 days claimed not to be at work.
- (ii) Commission did not resolve other issues having found that, respondent did not terminate applicant.
- (iii) Commission failed to take into consideration applicant evidence in her letter to the respondent that he was not involved in the theft.
- (iv) Commission decision was based on the part of respondent side more contrary to applicant evidence and what real transpired.

On the hearing date applicant was in person while respondent was represented by Mr. Ignas Rynge. Being un represented, applicant asked the court to adopt her affidavit in support of application as submission in support of revision. Respondent counsel did not object the prayer, he equally requested for the same. Court granted prayer by both parties to be able to hear both parties at same level field.

Having gone through affidavit in support of the application, counter affidavit, and CMA records, issued before me is;

- (i) Whether applicant was terminated from her employment.
- (ii) To what relief are parties entitled.

To be able to resolve first issue, applicant evidence at CMA while being cross-examined by respondent counsel from page 19-21 of CMA typed proceedings reveals as follows:

**Swali:** Ulipokuwa kazini kuna uthibitisho gani ulionyesha ulifika kazini.

**Jibu:** Daftari la mahudhurio

**Swali:** Ieleze tume kuanzia tarehe 25,26,27,28 uliweza kusaini kama kielelezo kilichopokelewa kama MKW-1

**Jibu:** Tarehe 25 katika daftari sijasaini, tarehe 26 kwa sababu sikuvingia kazini nilitoka.

**Swali:** Siku ya tukio ulisaini.

**Jibu:** Sikusaini

**Swali:** Tarehe 27 ulisaini.

**Jibu:** Sikusaini nilishafukuzwa kazi.

**Swali:** Tarehe 28 ulisaini.

**Jibu:** Siku saini walificha daftari

**Swali:** Tarehe 30 ulisaini

**Jibu:** Sikusani.

**Swali:** Tarehe 31 ulisaini

**Jibu:** Nimesaini

**Swali:** Utakubaliana na mimi tarehe 25-30 hujasaini kufika kazini

**Jibu:** Sijasaini ni kweli

From the evidence attained during cross examination of the applicant, it is clear that applicant did not report to work for 5 (five) days. Respondent evidence lead by Dingo Simba Mawila DW2 is to the effect that, applicant absconded from her employment from 25-30 May, 2017 following being asked about 24,500 Shs, that she received from customer in room number 35 B. The issue was also reported to police for investigation. Applicant did not give any explanation, when asked as to where about the sum of 24,500 Shs, thus decided to file dispute at CMA on 29<sup>th</sup> May, 2017.

From the evidence of applicant while being cross examined, admitted that she was absent from 25-30 May, 2017 without any reason. She admitted that she signed exhibit MKW-1, attendance register (Kitabu cha Mahudhurio) on 31<sup>st</sup> May, 2017. This court wonders if she filed dispute at CMA on 29<sup>th</sup> May, 2017 claiming to have been terminated, why signed attendance register on 31<sup>st</sup> May, 2017? was there any termination then?

Throught her evidence, applicant has failed to prove that, she was terminated by her employer "B" one lodge. The duty to prove that applicant was terminated was heirs, which she did not discharge. From the evidence adduced at CMA, there is no proof that applicant was terminated. It is on record that applicant was on duty for the month of May until 24 May, 2017 when alleged theft of 24,500 Shs occurred. Thus entitled for the salary of May as correctly ordered to be paid by arbitrator. To this court, I do not see why I should depart from CMA decision. This application for revision is without merits, accordingly dismissed.

  
Z.G. Muruke

**JUDGE**

08/12/2020

Judgment delivered in the presence of applicant in person and Baslisa Claudia, Learned Counsel for the respondent.

  
Z.G. Muruke

**JUDGE**

08/12/2020