

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 769 OF 2019**

**BETWEEN**

**GEORGE ILIAKOPOULOS.....APPLICANT**

**VERSUS**

**ZANZIBAR TELECOMMUNICATION LTD.....RESPONDENT**

**JUDGMENT**

***Date of Last Order: 18/11/2020***

***Date of Judgment: 14/12/2020***

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

Applicant, George Iliokopoulous, was employed by Zanzibar Telecommunication Limited as Chief Commercial Officer for a period of two years, under probation of six months, at a salary of **12,000 USD** per month from 1<sup>st</sup> April, 2017. Applicant was also entitled to other benefits namely (i) International Medical Insurance cover for himself, spouse, 4 children/dependent under the age of 18 years (ii) on target bonus of **30%** of annual basic salary, (iii) being eligible for LTIP nomination, (iv) Relocation allowance of **USD 5,000** (v) a partial **furnished house**, and (vi) a **company car for** both office and personal use. Being under probation period of six months, on 29<sup>th</sup> September, 2017 respondent extended period of probation for three months up to 31<sup>st</sup> December, 2017. Thus, on 1<sup>st</sup> October 2017, applicant was put to performance improvement

planning (PIP), because, respondent concern was that, the overall business performance was poor and that he did not perform to the manager's expectations. It was agreed on Action plan and review dates were scheduled to be on 31<sup>st</sup> October, 30<sup>th</sup> November and 31<sup>st</sup> December, 2017. However, applicant was terminated on 21<sup>st</sup> December, 2017. For clarity termination letter is hereby reproduced.

REF: HR/3530/2017

December,21,2017

Mr. George Iliokopoulos,  
Chief Commercial Officer,  
Zantel.  
Ufs: Sherif El-Barbary  
Chief Executive Officer

Dear George,

**RE: NOTICE OF TERMINATION OF THE EMPLOYMENT CONTRACT**

We refer to the employment contract entered on 1<sup>st</sup> April, 2017 between yourself and Zantel and in terms of Section 1.3 and 1.4 of the contract. You are hereby informed that your contract of employment is terminated effectively today.

Therefore, as per section 10.2 of the contract, zantel will pay you months basic salary in lieu of the notice.

In addition, Zantel will pay you salary, any outstanding leave balance and your medical insurances will carry up to the end of the medical insurances policy, August, 2018. Below is the breakdown of the termination parkage, subject to statutory deductions.

(i)	Salary up to December, 31st 2017 : 12,000 USD	
(ii)	Three months basic salary including one month notice, 36,000 USD	
(iii)	Leave balance (14.64 days	<u>6.240, USD</u>
	Total	<b><u>54,240 USD</u></b>



The company will give you a certificate of service and pension fund documents, to assist you with the process of withdrawing your contribution from the fund.

Following the above, you are therefore requested to hand over all company properties that were entrusted to you by virtue of your employment to the Human Resource department.

Likewise, you have to complete all exit procedure with Human Resources Department. We thank you for your contribution and wishing you best of luck in your future endeavors.

Yours faithfully

For and on behalf of Zanzibar Telecom Limited.

Sgd: -

Joanithaa Rwegasira Mrego  
**Head of Human Resources**

**Acknowledgement of receipt of the termination letter.**

I George Iliokopoulos do hereby acknowledge receipt of this letter and by signing this letter, I accept termination of the contract between self and Zantel, on the payment as full and final settlement. I do not have any further claims for remunerations, or arising out of this termination of my contract and I shall not lodge before a court of law or tribunal any claim against Zantel relating to my tenure or this termination.

Signature: .....

Date: 22/12/2017

Despite above declaration not to lodge any dispute, applicant on 19<sup>th</sup> January, 2018 filed dispute at CMA claiming to be unfairly terminated, thus requested a number of reliefs. Before hearing the following issues were registered for the tribunal to determine.

- (a) Whether employer failed to meet a performance standard.
- (b) Whether the employee was aware or could reasonably be expected to have been aware of the required performance standard.
- (c) Whether the employee was afforded a fair opportunity to meet the performance standard.
- (d) Whether procedure for termination was followed.
- (e) To what reliefs are the parties entitled to.

Arbitrator upon hearing both parties on the issues framed, decided in favour of applicant, that he was unfairly terminated, thus ordered respondent to pay applicant six months remunerations which is 72,000,00(USD) Seventy Two Thousands United States Dollar within 28 days from the date of receipt of the order. Unfortunately, through decision was on applicant favour, he was dissatisfied, thus filed present revision raising one issues for consideration namely:-

That the Honourable Arbitrator arrived at followed decision by awarding the applicant the **tiniest amount of 6 six month** salary without justifiable reason despite his declaration that respondent breached the contract.

Hearing was by way of written submission, applicant was represented by Advocate Lige James of Gabriel and Co. Attorneys at Law, while Pascal Kamara represented respondent. For reason to be adduced later, I will not deal with the merits of the case. I have noted with concerns that respondent submitted seriously on an issue of applicant starting working without any valid working permit. In terms of anexture G1 attached in the list of documents to be relied by complainant at CMA, now applicant.



During hearing, applicant was cross examined by the respondent counsel on the issue from page 22-23 of CMA typed proceedings in which he admitted that working permit exhibit G1 was issued on 3<sup>rd</sup> August, 2017 for 2 years to 2<sup>nd</sup> August, 2019, this imply that, applicant who started working on 1<sup>st</sup> April, 2017 with respondent had no permit by then. Despite issue of permit featuring on proceedings as shown, there was no issue framed, and determined during the trial on that aspect.

To this court, this is an important, point to be resolved, bearing in mind it is an evidence relied by applicant at CMA. Respondent raised during closing submission at CMA, and at this court, by way of submissions. It is worth noting that when an issue arise, not one of issues framed for determination, before composing judgment, tribunal or court ought to ask parties to address the same. Spirit being not to leave issue unresolved, to avoid multiplicity of cause of action and to ensure that, disputes are coming to an end upon hearing both parties.

Thus, as records stand now, whether applicant had valid working permit in terms of exhibit G1 employment contract and working permit has not been resolved. The contract is the basis of the dispute, which respondent claims to be illegal in the absence of valid working permit by applicant. This court cannot resolve the same at this level without giving parties right to give evidence at CMA.

Failure to hear part of the dispute, is a serious breach of principle of natural justice. Right to be heard was insisted in the case of Court of Appeal of **Abbas Sherally Vs. Abdul Sultan Haji Mohamed Fazalboy** Civil application No. 133 of 2002 (unreported).

That right is so basic that a decision which is arrived at in violation of it will be nullified even if the same decision would have been reached had the party been heard because the violation is considered to be a breach of the principles of natural justice.

Right to be heard is one of fundamental principals of natural justice, failure of which vitiates proceedings. Rule of natural justice states that no man should be condemned unheard and, indeed both sides should be heard unless one side chooses not to. **It is a basic law that, no one should be condemned to a judgment passed against him without being afforded a chance of being heard.** The right to be heard is a valued right and it would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.

The above position was discussed in the case of Court of Appeal Civil Appeal number 300 of 2017 between **Registered Trustee of Arusha Muslim Union Versus the Registered Trustees of the National Muslim Council of Tanzania** (Bakwata) where it was held that:

It is evident in the present case that the parties were not heard on the issue whether the appellant is an unlawful society with no capacity to own land which was raised and determined by the High Court when

composing the judgment. In fine, both the High Court Judgment and the decree thereof are hereby quashed and set aside. The record is hereby remitted to the High Court for it to hear the parties on the issue whether the appellant is an unlawful society with no capacity to own land then compose a fresh judgment in which all the issues that were framed as well as the above one shall be considered in accordance with the evidence and law.

Since parties were not given right to heard on the issue so glaring, award sought to be challenged left unresolved issue cannot stand. Thus award (six month salary) granted to the applicant is quashed and set aside. Arbitrator to frame and determine issue of validity of contract G1 in respect of applicant working permit issued on 3<sup>rd</sup> August, 2017, by allowing parties to address on the same. Later, arbitrator to write decision together with other issues raised earlier. This dispute stated in 2017 same to be finalized within six month from when arbitrator is handled over CMA records. CMA records to be returned within 30 days from the date of decision. Deputy Registrars to ensure compliance.



Z.G. Muruke

**JUDGE**

14/12/2020

Judgment delivered in the presence of Rebeca J. Mangongozi for the applicant and also holding brief of Mr. Alex Felician for the respondent.



Z.G. Muruke

**JUDGE**

14/12/2020