

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 394 OF 2019

FATMA DEWJI **APPLICANT**

VERSUS

SOPHIA SAID **RESPONDENT**

10/09/2020 & 23/10/2020

JUDGMENT

BANZI, J.:

On 1st December, 2015 Sophia Said, the Respondent was employed by Fatma Dewji, the Applicant on a position of a house maid, the position she held until 7th October, 2017 when she was terminated. Being aggrieved by her termination from employment, the Respondent referred the dispute to the Commission for Mediation and Arbitration ("the CMA") at Dar es Salaam and it was decided in her favour whereby she was granted, twelve months' salary as compensation, one-month salary in lieu of notice and severance pay. The total amount of money granted as indicated in the Award was Tshs. 2,322,115/=.

The Applicant is aggrieved and has moved this Court to revise the Award of the CMA dated 1st April, 2019.

At the hearing of the matter, the Applicant enjoyed the services of Mr. Praygod Uiso, learned counsel, whereas the Respondent appeared in person unrepresented. By consent, the revision was heard by way of written submissions.

In the affidavit, the Applicant raised four grounds of revision but in the submission, Mr. Uiso prayed to abandon the first, second and third grounds and remained with the fourth ground which is reproduced as hereunder;

"Whether it is proper for the Arbitrator to award the compensation which was not claimed by the Complainant."

I have thoroughly examined the submission by Mr. Uiso, learned counsel for the Applicant. Surprisingly, his submission is not supporting the ground of revision stipulated in the affidavit. As stated shortly herein above, the remaining ground after other three being abandoned concerns payment of compensation which was not claimed by the Respondent. Nevertheless, the whole submission was about severance pay. According to him, upon termination, among other things, the Respondent was paid Tshs.47,115/= being seven days salary as severance pay for the completed year of working. However, the Arbitrator granted additional severance pay while the Respondent was not entitled to be paid the said amount since she did not complete the second year of working. In that regard, he prayed for this revision to be allowed by quashing and setting aside the award and the proceedings of the CMA.

On the other hand, the Respondent in her submission contended that, compensation was among the relief claimed before the CMA through CMA F.1 and in that regard, the Arbitrator acted properly. It was further submitted that, through CMA F.1, the Respondent claimed payment of Tshs.2,100,000/= as compensation for unfair termination and Tshs.175,000/= being notice. Therefore, it was proper for the Arbitrator to award compensation as claimed in accordance with section 40 (1) of the ELRA. However, the Respondent

conceded that, she was paid Tshs.47,115/= as severance pay on 11th October, 2017. Thus, she prayed for the revision to be dismissed.

After careful consideration of parties' arguments and grounds for revision in the light of evidence on CMA record, the issue that call for my determination is, *whether payment of compensation and severance pay was properly awarded.*

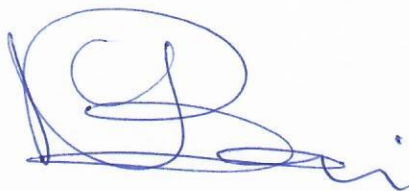
First and foremost, upon a thorough examination of the evidence on record, it is undisputed that the Applicant failed to prove that the termination was fair as it is required under section 39 of the ELRA. There is no scintilla of evidence from her witness one, Ramadhani Athumani, the co-worker of the Respondent to prove if there was valid reason for termination. Likewise, no evidence was adduced by the said witness to prove that the Applicant followed the procedure prescribed by the law. Hence, it suffices to conclude that the Applicant failed to discharge her statutory obligation of proving termination was based on valid reason and fair procedure. Thus, the conclusion by the Arbitrator on unfair termination was properly made.

Reverting to the issue at hand, as stated herein above, there was no link between the ground for revision and what has been submitted by learned counsel for the Applicant. Nonetheless, be it as it may, it is apparent and undisputed that compensation was among the claims by the Respondent indicated in CMA Form No. 1. Also, it is well known that amongst the remedies for unfair termination provided under section 40 (1) of the ELRA is payment of compensation of not less than twelve months' remuneration. These remedies are awarded on the discretion of a Judge or Arbitration. However, whenever the court or quasi-judicial body is given discretion, the same must be exercised

judiciously with the view of attaining just and fair decision considering circumstances of each case. Thus, it is the firm view of this Court that, in the particular circumstances of this case, the Arbitrator exercised his discretion judiciously by awarding payment of compensation considering the fact that termination was both substantively and procedurally unfair.

In respect of severance pay, according to section 42 (2) (a) of the ELRA, the same is paid if the employee has completed 12 months continuous service with the employer. There is no dispute that, by the time the Respondent was terminated, she worked for one year and nine months. Obviously, as far as the second year is concerned, she did not complete 12 months. Besides, in her submission she conceded to be paid Tshs.47,115/= as severance pay. In that regard, the order of additional severance pay was not justified in law.

In the upshot, save for order of the severance pay which is hereby quashed, I confirm the Award of the CMA. Thus, Respondent is entitled to be paid Tshs.2,100,000/= being twelve months' salary as compensation and Tshs.175,000/= salary in lieu of notice. Consequently, this revision is accordingly dismissed.



I. K. BANZI
JUDGE
23/10/2020