

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

**REVISION NO. 256 OF 2020**

**JOHN PETER..... APPLICANT**

**VERSUS**

**SONGORO MARINE TRANSPORT LIMITED**

**BOATYARD.....RESPONDENT**

(From the decision Commission for Mediation & Arbitration of DSM at Temeke)

(Msina, H.H: Arbitrator)

Dated 20<sup>th</sup> May 2020

in

**Labour Dispute No. CMA/DSM/ILA/R.601/18/397**

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**JUDGEMENT**

18<sup>th</sup> November & 24<sup>th</sup> December 2021

**Rwizile, J**

**John Peter** the applicant herein, has preferred this application against the ruling of the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/DSM/ILA/R.601/18/397 dated 20<sup>th</sup> May 2020. The applicant is asking this court to make the following orders: -

1. This Honourable Court be pleased to call for records and the proceedings in Labour Dispute No. CMA/DSM/ILA/R.601/18/397 by.
2. That the costs of this application be proved for.
3. Any other reliefs this Honourable Court may deem fit to grant.

The application is supported by the applicant's affidavit stating reasons for which this application is based. Opposing the application, the counter affidavit of Hamad Aweso the respondent's Principal Officer was filed.

The background of the dispute in brief is that; the applicant was employed by the respondent as a Welder. Their relationship turned sour and the applicant was terminated upon expiring of this contract. In the circumstances and following this misunderstanding, the applicant referred the matter to the CMA. CMA after a hearing dismissed the same. Dissatisfied with the award, he filed the present application.

Both parties to the application were represented. Mr. John Lingopola, learned advocate was for the applicant, whereas the respondent was represented by Mr. Hemed. The hearing proceeded orally.

Supporting the application Mr. Lingopola submitted that commission held that, it was not proved that the respondent worked for the applicant. But exhibit AP2 which is a medical report shows that he was injured when he was on duty. He stated that the other evidence is from PW2 who was the applicant's co-worker. According to the counsel, Pw2 testified that they worked together since 2016 to 2018. It was stated that it is Pw2 who proved that they were together building the ship when the applicant got injury.

He argued that the CMA erred in law by holding that there was a contradiction of evidence adduced by PW1 and PW2. PW1 said he was alone when an accident occurred, while PW2 said were together. Therefore, the commission did not consider, whether they were co-workers. It did not also rule out, if the applicant was injured.

Then, it was stated that there is evidence that he was so employed and got an accident at work. There was a dispute that he was employed for less than 6 months. From December to May the respondent said, when the applicant started working but later it was said his work was terminated on 30.10.2016. The applicant proved he went on duty until terminated. Therefore, there was sufficient proof to that effect.

Secondly, Mr. Lupongola submitted that the respondent tendered exhibit D1. The counsel held the view that the letter ought not to be admitted because, it was prepared and signed by the applicant alone. He said, it was not proved if the same was served on the respondent, provided there was a contract between them as provided under section 67 and 68 of evidence Act. No notice was given to the applicant. Therefore, he added, the respondent could not prove the presence of the same this is a proof that he received the same. He further submitted that exhibit D1 be struck out and it be held that the applicant proved his case.

Regarding exhibit D1, Mr. Hemed submitted that the same is a contract as which is in line with section 67 of Evidence Act. The same requires a notice to be issued. The same exhibits, he added was sent to the advocate. It was therefore clear that the notice needed was given. He could get the original one, because there is no dispute that it was objected to. The letter itself was issued by the employee, which shows the time given lapsed on 30.10.2016. The applicant took the view that it was proper for exhibits D1 collectively and the payment was made. The applicant was given Tsh 246,000/= for leave and fair.

Mr. Hemed further argued that witnesses may not necessarily come from the applicant but a person who says he saw. It was his submission that, the evidence of PW1 and PW2 are in conflict, regarding applicant's injuries. Therefore, the CMA was justified for one reason that the contract of 10 months was terminated with terminal benefits as the same expired. In his view, other evidences such as photos were not authenticity i.e exhibit P1. It was further submitted that there was no contract between the parties on the ground that at the period he got exhibit P1, he was not an employee. It is not recorded anywhere that he got an accident while he was still on duty.

In rejoinder Mr. Lingopola submitted that there is no where it recorded to call for certified copy, since time had elapsed. Exhibit D2, he said does not prove the applicant got the money. PW2 was employed by the applicant and together with PW1.

Having considered applicant's submissions and the CMA record, I find it worth to determine the following issues -

- i) Whether applicant's employment contract was terminated upon its expiry?
- ii) What reliefs are the parties entitled to?

Starting with the first issue as to whether the applicant's employment contract ended or not. The evidence available reveal nothing about the contracts of the parties. However, the existence of employment contract in any legal proceeding is well stipulated under section 15(6) of the Employment and Labour Relation Act, [Cap 366 R.E 2019] which state that; -

*"15(6) If in any legal proceedings, an employer fails to produce a written contract or the written particulars prescribed in subsection (1), the burden of proving or disproving an alleged term of employment stipulated in subsection (1) shall be on the employer."*

In this matter, it is undisputed that the applicant was employed on 2016 under fixed term contract as testified by PW1 at the trial, CMA proceedings and supported by exhibit D1 which is a notice to terminate. Basing on the above cited provision the employer has the duty to prove when the applicant's contract came to an ended. This was proved by tendering evidence including exhibit D2, the applicant's NSSF contributions. All this justify that his contract ended upon expiring of the same, as per Rule 4(2) of G.N No. 42 of 2007.

Regarding reliefs, as the first issue was answered in the affirmative, I hereby uphold the CMA award, the application is dismissed. Each party to bear own costs.





A.K. Rwizile

**JUDGE**

24.12.2021