

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

**REVISION NO. 146 OF 2020**

**BETWEEN**

**MATHIAS A. MATHIAS**  
**RASHID MWINYIHIJA**  
**AMINA CHARLES**

..... **APPLICANTS**

**VERSUS**

**ST. JOSEPH UNIVERSITY** ..... **RESPONDENT**

**JUDGEMENT**

**S. M. MAGHIMBI, J**

Before me is an application for revision filed by the applicants herein challenging the decision of the Commission for Mediation and Arbitration(CMA) in Labour Dispute No. CMA/DSM/ILA/UBG/R144/18/106 ("the Dispute") dated 06<sup>th</sup> March, 2020 by Hon. Mbeyale, R. Arbitrator. The application is made by notice of application and Chamber Summons supported by a joint affidavit of the applicants. On the other hand, the respondent vehemently challenged the application by filing counter affidavit sworn by Genel Shaban, the respondent's Principal Officer.

Brief facts of the dispute are that the applicants were employed by the respondent on different dates and salaries as Anatomy Laboratories attendants. The dispute between the parties arose on 12/11/2018 when the applicants were terminated from employment on the ground of

misconduct namely insubordination. Aggrieved by the termination the applicants referred the dispute to the CMA where it was decided that the applicants were unfairly terminated from employment. Following such finding the Arbitrator awarded the first and second applicants two months salaries whereas the third applicant was awarded five months salaries as compensation for the alleged unfair termination. Aggrieved by the CMA's award the applicants filed the present application on the following grounds: -

- i. That the Honourable Arbitrator erred in law and fact in not computing exact the months which the complainants were entitled to be compensated by the respondent.
- ii. That the Honourable Arbitrator erred in law and fact in not recording correctly the filed term contract entered by the parties.

The application was argued by way of written submission. Mr. Mohamed Sultan, Personal Representative was for the applicants whereas Mr. Genel Shaaban, Learned Counsel appeared for the respondent.

Mr. Sultan submitted that since the CMA proved breach of contract, the applicants were entitled to be compensated for the

remaining month's salaries. To support his argument, he cited the case of **Joakim Mwanikwa v. Golden Tulip Hotel, Revision No. 268 of 2013**. He then argued that Amina Charles is entitled to 9 months salaries instead of 5 months awarded by the Arbitrator, Mathias is entitled to 13 months instead of 2 months and Rashidi Mwinyihija is entitled to 13 months salaries instead of 2 months awarded to him. He therefore urged the court to revise the award and order the respondent to pay the applicants the remaining period of the contract.

In response to the application, unfortunately Ms. Ninah did not respond to the applicants ground of revision. She came up with her own cross revision thus, I find no relevance to reproduce her submission. With due respect to the Learned Counsel's submission, it is my view that if the respondent was also aggrieved by the CMA's award, he ought to have filed his application for revision but not challenging the CMA's decision in a way he did.

Coming back to the merits of the application, having gone through the records and the submissions of the parties, the dispute is centred on the remedies awarded for the breach of employment contract. The court is called upon to determine whether the applicants were properly awarded compensation by the CMA. As stated above, the CMA found



that there was a breach of contract in this matter hence proceeded to award the applicants compensation for the alleged breach.

The applicants are disputing the computation of the amount of compensation contending that the Arbitrator ought to have awarded them the remaining period of the contract. As for me, I join hands with the applicants' contention. Indeed, the law requires that in cases of breach of a fixed term contract, the affected employee is awarded compensation of salaries for the remaining period of the contract as foreseeable loss. Such practice has also been blessed by the Court of Appeal in numerous decisions including the case of **Bahari Oilfield Services Epz Ltd vs Peter Wilson (Civil Appeal 157 of 2020) [2021] TZCA 250 (11 June 2021)**.

Therefore, on the basis of the foregoing, since the applicants were employed on a fixed term contract, then the CMA erred in awarding compensation less than the remaining period of their contract. The said part of the award is therefore revised and set aside, I hereby proceed to order the following compensation:

- i. The first applicant Mathias A. Mathias had three years contract commenced on 17/01/2017 which was about to end on 16/01/2020. He was terminated on 12/11/2018 therefore the

remaining period of his contract was 14 months. His salary was Tshs. 200,000 x 14 = 2,800,000/=.

- ii. The second applicant Rashid Mwinyihija had three years contract commenced on 17/01/2017 which was about to end on 16/01/2020. He was terminated on 12/11/2018 therefore the remaining period of his contract was 14 months. His salary was Tshs. 200,000 x 14 = 2,800,000/=.
- iii. The third applicant Amina Charles had three years contract commenced on 12/10/2016 which was about to end on 11/10/2019. She was terminated on 12/11/2018 therefore the remaining period of the contract was 11 months. His salary was Tshs. 200,000 x 11 = 2,200,000/=.

In the result I find the present application to have merits and the award of the CMA is revised to the extent shown above. It is so ordered.

Dated at Dar es Salaam this 08<sup>th</sup> December, 2021.



  
**S.M. MAGHIMBI**  
**JUDGE**