

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION APPLICATION NO. 219 OF 2022**

*(Arising from an Award issued on 6/6/2022 by Hon. Lucia Chrisantus Chacha, Arbitrator in Labour dispute No. CMA/DSM/KIN/528/20/239 at Kinondoni)*

**JANUARY JULIUS MTUMBA & 2 OTHERS.....APPLICANTS**

**VESURS**

**KILIMANJARO TRUCK LIMITED.....RESPONDENT**

**JUDGMENT**

*Date of last Order: 24/10/2022*

*Date of Judgment: 10/11/2022*

**B. E. K. Mganga, J.**

On 29<sup>th</sup> June 2020, January Julius Mtumba, Shabam Abdurahman and Johnathan Vicent Elisatia, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants respectively, filed Labour Dispute No. CMA/DSM/KIN/528/20/239 before the Commission for Mediation and Arbitration (CMA) at Kinondoni alleging that Kilimanjaro Truck Limited, the respondent, unfairly terminated their employment. In the referral Form (CMA F1), applicants indicated that they were claiming to be paid TZS 27,955,000/= each being one month salary in lieu of Notice, Severance pay, leave pay, and 12 months' salary all amounting to TZS 83,865,000/=.

On 6<sup>th</sup> June 2022, Hon. Lucia Chrisantus Chacha, arbitrator, having heard evidence of the parties issued an award dismissing the complaint filed by the

applicants on ground that applicants were employed for specific task and that, there was no termination of employment of the applicants. The arbitrator held further that, applicants were not intitled to be paid the reliefs prayed.

Applicants were aggrieved by the said award hence this application for revision. In support of the application, applicants filed their joint affidavit in which they raised four issues for determination namely:-

- 1. Whether it was proper for the arbitrator to hold that applicants were employed for specific task without a contract proving existence of the said specific task contract.*
- 2. Whether, it was proper for the arbitrator to hold that applicants were not terminated rather, they terminated their employment.*
- 3. Whether it was proper for the arbitrator to hold that applicants were paid their entitlements without proof thereof.*
- 4. Whether it was proper for the arbitrator to shift burden of proof to the applicants.*

On the other hand, respondent filed the counter affidavit opposing the application.

When the application was called on for hearing, Mr. Hamza Rajab, the Personal representative, appeared and argued for and on behalf of the applicants, while Mr. Arbogast Meero, learned advocate, appeared and argued for and on behalf of the respondent.

In arguing the application on behalf of the applicants, Mr. Rajab abandoned the 2<sup>nd</sup> and 4<sup>th</sup> issues and argued the 1<sup>st</sup> and 3<sup>rd</sup> issues. On the 1<sup>st</sup> issue, he submitted that in terms of section 14(1)(c) and (2) of the

Employment and Labour Relations Act[Cap 366 R.E. 2019], all contracts of employment must be in writing and cited the case of ***Kundan Singh Construction Co.Ltd v. Sohola Singh***, Revision No.31 of 2013 HC (Unreported) to support his argument. Mr. Rajab submitted further that, respondent testified that applicants were not issued with written contracts. He argued that, in absence of the documentary or written contract, it was not proved that applicants were employed for specific task. He added that, it was not disputed that applicants were employees of the respondent. Mr. Rajab submitted further that, applicants testified that their contracts were for unspecified period and added that respondent had a duty to prove that applicants were not employed for unspecified period. Mr. Rajab relied on the provisions of sections 14 and 15(6) Cap 366 R.E. 2019 (supra) to argue that respondent had duty to keep records of her employees.

On the 2<sup>nd</sup> issue, Mr. Rajab submitted that, no documentary evidence was tendered by the respondent proving payment done to the applicants. He further argued that, it was not proved that applicants were paid their entitlements from 2017 to 2020. He cited Section 15(1)(h) and (5) of Cap 366 R.E. 2019(supra) and argued that respondent was duty bound to keep record of payment of employees in writing for five years after termination employment. He went on that, it was not proper for the arbitrator to hold, in absence of documentary evidence, that applicants were paid their

entitlements. He concluded his submissions praying that the application be allowed.

On the other hand, Mr. Meero, learned advocate for the respondent, responding to the first issue, submitted that parties had oral contracts of specific task. Counsel for the respondent submitted further that, applicants were duty bound, in terms of section 110 of the Evidence Act[Cap.6 R.E. 2019] to prove that they were employed for unspecified terms. To support his submissions, he cited the case of ***C.R.J Construction Co.(T) Ltd v. Maneno Ndaliye & Another*** Revision No.205 of 2015, HC (Unreported). Counsel did not specifically submit on the 2<sup>nd</sup> issue arguing that his submissions on the 1<sup>st</sup> issue covered also the 2<sup>nd</sup> issue.

In rejoinder, Mr. Rajab reiterated his submissions in chief.

At the time of composing the judgment, I carefully examined CMA F1 and noted that CMA F1 was not properly signed by the applicants. I therefore resummoned the parties to address the court on competence of the dispute that was filed at CMA and the application at hand.

Responding on the issue raised by the Court, Mr. Rajabu, the personal representative of the applicants submitted that CMA F1 was signed by a single person purporting to show that it was signed by all applicants. He added that even the Notice of Application in the application at hand was signed by a single person purporting to show that it was signed by all applicants and that

signatures in the CMA F1 differs from those in the Notice of Application filed before this court. Mr. Rajabu submitted that CMA F1 was defective hence the application was incompetent because there was no consent for the dispute to be filed in a representative capacity. He therefore prayed that CMA proceedings be nullified, the award arising therefrom be quashed and set aside.

On his side, Mr. Meero, learned Advocate for the respondent concurred with submissions made on behalf of the applicants and the prayer to nullify CMA proceedings, quash and set aside the award arising therefrom.

I entirely agree with submissions made by Mr. Rajabu, Personal representative of the applicants that applicants filed CMA F1 not in a representative capacity hence a single applicant had no power in absence of consent of the others to sign and file the dispute on their behalf. It is clear that there was no consent of other respondents to file the dispute at CMA which is why, the person who signed the CMA F1 forged signatures of other applicants to show that it was signed by all applicants. As if that is not enough, even the notice of application in this application was signed by a single person imitating signatures of other applicants to show that the application was signed by all applicants. Since the CMA F1 was not properly signed by the applicants, the said CMA F1 was defective hence the dispute was incompetent. It is my view that since the dispute was incompetent, it was

supposed to be struck out. That being the case, CMA proceedings were a nullity.

Since the issue that was raised by the court has disposed of the whole application, I will not consider the grounds raised by the applicants.

For the foregoing, I hereby nullify CMA proceedings, quash and set aside the award arising therefrom.

Dated in Dar es Salaam on this 10<sup>th</sup> November 2022.



B. E. K. Mganga  
**JUDGE**

Judgment delivered on this 10<sup>th</sup> November 2022 in chambers in the presence of Hamza Rajabu, Personal Representative of the applicants and Arbogast Meero, Advocate for the Respondent.



B. E. K. Mganga  
**JUDGE**