

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

REVISION NO. 377 OF 2020

BETWEEN

CENTAZA PLASTICS LIMITED APPLICANT

VERSUS

ERNEST MNDOLWA RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

The application beforehand is lodged under Section 91(1)(a), 91(2)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act, CAP 366 R.E. 2019 ("the Act") read together with Rule 24 (1), 24 (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) and 28(1)(b)(c)(d)&(e) of the Labour Court Rules GN. No. 106 of 2007 ("the Rules"). She is moving the court for the following:

1. That this Honourable Court be pleased to call for records of the labour Dispute No. CMA/DSM/TEM/252/2019/130/2019 delivered by Honourable Amos, H Arbitrator dated 23rd July, 2020 and served upon parties on 03rd August 2020, inspect, examine such records

therein and its proceeding to satisfy itself as to the correctness, rationality, propriety and legality of the Award.

2. This Honourable Court be pleased to revise and set aside the whole proceedings and subsequent Award of the Labour Dispute No. CMA/DSM/TEM/252/2019/130/2019 delivered by Honourable Amos, H Arbitrator dated 23rd July, 2020 and served upon parties on 03rd August 2020.
3. Any other reliefs this Honourable Court deems fit and just to grant.

The application was supported by an affidavit of Mr. William Chale, the Industrial Relations Officer of the Applicant Company, dated 14th September, 2020. The respondent opposed the application by filing a notice of opposition under Rule 24(4) of the Rules. Before this court, the applicant was represented by Mr. Ashery Stanley, learned advocate while the respondent appeared in person and unrepresented. The application was disposed by way of written submissions and both parties adhered to their schedule of admission.

From the gathered fact on record, the brief background of the matter dates back to the 01st December, 2018 when the respondent was employed by the applicant in the position of a Supervisor at a salary of

Tshs. 400,000/-. The employment relationship did not last long and on the 15th day of May, 2019, the applicant terminated the respondent's employment on ground of unsatisfactory performance during probation period (EXD1). The respondent was subsequently paid his dues which included a one month salary in lieu of notice and the days worked for the month of May (EXD2). Aggrieved by the termination, the respondent successfully referred a dispute at the Commission for Mediation and Arbitration ("the CMA") through Labor Dispute No. CMA/DSM/TEM/252/2019/130 ("the Dispute"). The CMA ordered the applicant to compensate the respondent for substantive unfair termination at the rate of 12 months' salary which totaled to a sum of Tshs. 4,800,000/-. Aggrieved by the said award, the applicant has lodged the current application raising the following legal issues:

1. Whether it was legally proper for the CMA not to frame and determine crucial issues regarding the nature of contract between the applicant and respondent.
2. Whether it was legally proper for the arbitrator to hold that *there* existed a permanent contract between the applicant and the respondent.

3. Whether it was legally proper for the CMA not to reject the CMA Form No. 1 which was defectively filled.

The first and second issue will be determined together as it appears to me that the applicant is challenging the CMA's finding on the nature of contract that existed between the applicant and the respondent. The CMA made a finding that there existed a permanent contract between the applicant and the respondent, something which the applicant is now challenging. In his submissions, Mr. Stanley submitted that the CMA's finding that the applicant failed to prove the fact that the respondent was under probation as found on page 7 and 8 of the impugned award was an error as the EXD1 proved that the respondent was terminated on reason of unsatisfactory performance during probation period. That the termination letter served the purpose of proving that the respondent was a probationary employee. Unfortunately, the respondent did not reply to this specific issue and instead he went on talking of unfair termination of employment.

On my part, I am in agreement with the submissions by Mr. Stanley for reasons I shall elaborate. While I was going through the facts of this application, something caught my attention, the EXD1, the termination

letter which is explicitly titled "**YAH: KUACHISHWA KAZI KATIKA KIPINDI CHA MAJARIBIO**" and also from the gathered facts, it would appear that the respondent had been employed by the applicant for only a period of four and a half months before his termination. I then posed and asked myself whether the CMA had jurisdiction to entertain the matter pursuant to Section 35 of Part III Sub-Part E of the Act. Starting with the Section 35 of the Act, it provides:

"...the provisions of this Sub-Part shall not apply to an employee with less than 6 months' employment with the same employer, whether under one or more contract".

Now looking at the evidence available, and actually not disputed by the parties, the applicant was terminated on 15/05/2019 which when we count from the 01st December, 2018 when the employment relationship commenced, it was less than six months period. Coming to the cited Section 35 of the Act, a party may not lodge a dispute under sub-part III of Part III of the Act unless he was worked for less than six months' time whether under one or more contracts under the same employer. That being the case, it is obvious that the CMA did not have jurisdiction to entertain the dispute as it did. Having lacked jurisdiction to entertain the

matter, the proceedings and the subsequent award of the CMA are hereby nullified.

Dated at Dar es Salaam this 04th day of March, 2022.



A handwritten signature in black ink, appearing to read "S.M. Maghimbi", written over a horizontal dotted line.

S.M. MAGHIMBI
JUDGE