

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

**REVISION APPLICATION NO. 429 OF 2021**

*(Arising from an award issued on 5<sup>th</sup> November 2018 by Hon. Grace Wilbard Massawe, arbitrator, in labour dispute No. CMA/DSM/ILA/R.14/17 at Ilala)*

**BETWEEN**

**SARAH HAONGA ..... 1<sup>ST</sup> APPLICANT**  
**PENDO NYEMBEKE ..... 2<sup>ND</sup> APPLICANT**  
**RAPHAEL GEORGE ..... 3<sup>RD</sup> APPLICANT**

**AND**

**VIETTEL TANZANIA LIMITED .....RESPONDENT**

**JUDGMENT**

*Date of last Order: 16/06/2022*

*Date of Judgment: 27/06/2022*

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

On 2<sup>nd</sup> May 2017, Sarah Haonga, Pendo Nyambeke and Raphael George, the herein applicants filed a labour complaint No. CMA/DSM/ILA/R.14/17 before the Commission for Mediation and Arbitration henceforth CMA at Ilala complaining that Viettel Tanzania Limited, the respondent, unfairly terminated their employment. In the form

referring the complaint before CMA (CMA F1), applicants indicated that they were claiming to be paid TZS 18,000,000/= for unfair termination and salary arrears. Having heard evidence of both sides, on 5<sup>th</sup> November 2018, Hon. Grace Wilbard Massawe, arbitrator, issued an award in favour of the applicants as she found that applicants were unfairly terminated. The Arbitrator awarded each applicant to be paid TZS 150,000/= as one month salary in lieu of notice, TZS 80,769/= as severance pay for 2 years and TZS 150,000/= as one month salary compensation for unfair termination.

Applicants were aggrieved by the said award as a result they filed this application for revision. In the affidavit sworn by Sarah Haonga in support of the application, the applicants raised four grounds namely: -

- 1. That, the arbitrator erred in law and facts for her failure to award 12 months' salary as statutory compensation.*
- 2. That, the Arbitrator erred in law and facts by her failure to consider evidence of the applicants and deliver an award that does not reflect evidence in the proceedings.*
- 3. That, the Arbitrator erred in law and facts by her failure to analyze evidence.*
- 4. That, the arbitrator erred in law and facts by delivering an award that does not reflect the proceedings.*

I should point from the outset that respondent did not file the count affidavit even though she was served with the application.

When the application was called for hearing, Ms. Sarah Haonga appeared and argued the application for and on behalf of her co-applicants while Mr. Allan Sanga, the legal officer of the respondent argued for and on behalf of the respondent.

Ms. Haonga, submitted on the grounds of revision generally that the arbitrator erred not to award 12 months compensation. She went on that in 2015 applicants were orally employed by the respondent for unspecified period and that their employment was unfairly terminated orally on 2<sup>nd</sup> January 2017. She also submitted that respondent gave no reason for terminating their employment and further that they were not called in any meeting to be informed any misconduct they committed to justify termination. In short, she submitted that termination was unfair for want of reason and procedure. She faulted the arbitrator's decision of awarding them one month compensation for unfair termination. In her submissions, she stated that Mr. Deogratias Hugo, an officer of the respondent paid each applicant one month salary i.e., TZS 150,000/= after termination being salary for the month of December 2016.

Mr. Sanga, Principal Legal officer of the respondent submitted that applicants did not prove salary arrears, leave pay and severance. He submitted that termination of the applicants was due to operational requirements as provided for under Section 38 of the Employment and Labour Relations Act [Cap. 366 R.E. 2019]. He went on that the arbitrator considered evidence of the parties and that salary arrears claimed by the applicants did not comply with Section 44 Cap. 366 R.E. 2019(supra). He concluded by praying that CMA award be upheld.

In rejoinder, Ms. Haonga had nothing to add other than praying the court to justice.

I have examined the CMA record and find that no reason was advanced by the respondent to justify termination of employment of the applicants. Initially, respondent distanced herself with the claims by the applicants stating that applicants were not her employees. But evidence adduced by the applicants and partly by the respondent, proves that applicants were employees of the respondent. Mr. Sanga, legal officer of the respondent who also appeared at CMA, has submitted that applicants were terminated due to operational requirements. With due respect to him, there is no evidence on CMA record justifying termination of the applicants

apart from initial denial that applicants were not employees of the respondents. Mr. Sanga's submission is an afterthought intending to circumvent the provisions of section 40 of Cap. 366 R.E. 2019 (supra). Even if Mr. Sanga's submission is true of which it is not, termination of employment of the applicant is still unfair for want of procedure of termination based on operational requirements. In my view, the arbitrator correctly found that termination of employment of the applicants was substantively and procedurally unfair. She however erred in law to award one month salary compensation for unfair termination. Section 40(1)(c) of the Employment and Labour Relations provides 12 months' salary compensation. Since the arbitrator found that termination was both substantively and procedurally unfair, she was not supposed to award one month salary as compensation. In the circumstances of the application at hand where there were no valid reasons for termination and procedure was flawed, applicants were supposed to be paid 12 months' salary compensation and not one month awarded by the arbitrator. I therefore allow the 1<sup>st</sup> ground.

In the affidavit in support of the application, applicants complained that the arbitrator did not analyze evidence of the parties specifically that



she did not consider evidence of the applicants. I have examined the CMA record and find that the arbitrator fairly analyzed and considered evidence of both sides. That said and done, I dismiss the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> grounds.

In the CMA FI, applicants indicated that they were also claiming for salary arrears. I have examined the CMA record and find that this claim was not proved by evidence. I therefore dismiss that claim.

Having allowed the 1<sup>st</sup> ground, I hereby revise the said CMA award and set aside an order of one month salary compensation and order that each applicant shall be paid (i) TZS 150,000/= as one month salary in lieu of notice, (ii) TZS 80,769 being severance pay and (iii) TZS 1,800,000/= being twelve (12) months' salary compensation. In short, each applicant shall be paid TZS 2,030,769/= in total each. In total, the respondent is ordered to pay TZS 6,092,307/= to all applicants.

That said and done, I allow the application.

Dated at Dar es Salaam this 27<sup>th</sup> June 2022.



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

Judgment delivered on this 27<sup>th</sup> June 2022 in the presence of Sarah Haonga and Pendo Nyembeke, applicants and Allan Sanga, principal Legal Officer of the Respondent.



A handwritten signature in black ink, appearing to read "B. E. K. Mganga".

B. E. K. Mganga

**JUDGE**

Labour Court TZ.