

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

REVISION NO. 561 OF 2020

BETWEEN

RAMADHANI BAKARI FIKIRINI APPLICANT

VERSUS

MUUNGANO PRIMARY SCHOOL

ILALA MUNICIPAL COUNCIL RESPONDENT

JUDGEMENT

S. M. MAGHIMBI, J.

The applicant in this case alleged to have been an employee of the 1st respondent as a Security Guard by an oral agreement since 2017. He further alleged that on 07/03/2019 he was terminated from employment on unfounded reasons which aggrieved him so he referred a dispute to the Commission for Mediation and Arbitration for Ilala ('CMA'). In his CMA Form No.1 the applicant claimed of unfair termination, payment of unpaid up salaries for 30 months, notice, severance pay and unpaid annual leave. After considering the evidence of both parties, the CMA found that there was no employer/employee relationship between the parties and consequently dismissed the applicant's claims. Dissatisfied by the CMA's award, the applicant filed the present application praying for the following orders: -

- i. That this Honourable court be pleased to call for a record and examine the proceedings and subsequent award of the Commission for Mediation and Arbitration at Dar es salaam in labour dispute No. CMA/DSM/ILA/829/19/118 dated 16/11/2020 for appropriateness of the decision and the award issued therein.
- ii. That the Honourable Court be pleased to make revision and set aside the decision as result of discrimination and oppression on part of the applicant and further declare that the applicant herein was unfairly terminated from his employment.
- iii. That this Honourable court be pleased to clarify on the payment of the applicant be reinstated with all employment right or remuneration and other benefits from the date of termination to the date of reinstatement to the final payments and salaries not paid for complainant.

The matter was argued by way of written submissions. Before this court the applicant appeared in person, unrepresented and Ms. Thuwaiba Abdallah Jumbe, learned State Attorney, represented the respondent.

Arguing in support of the application, the applicant complained of the CMA failure to allow the applicant to tender the attendance register

which shows that he was attending work. He claimed that the denial deprived him the right to be heard supporting his submission, by citing the case of **Tanzania Telecommunication Company Vs. Augustine Kibandu, Revision No. 122 of 2009 HCLD** (unreported). He submitted further that the CMA relied on the evidence of the respondent alone and denied the applicant to bring his evidence. He added that no payroll (exhibit D3) was tendered to prove that DW3 was still the employee of the respondent from 2017 to 2019. He therefore urged the court to quash and set aside the award for denial of the applicant's right to be heard.

In reply, Ms. Jumbe submitted that the applicant has never been the employee of the respondent. As to the allegation on the right to be heard, she submitted that no evidence was tendered to substantiate the applicant's claims. That the respondent proved that there was no employment relationship between the applicant and the respondent, evidence which was supported by all other witnesses.

Ms. Jumbe argued that it was the duty of the applicant to prove employment relationship between the parties. To support her submission, she cited the Court of Appeal case of **Abdul-Karim Haji Vs. Raymond Nchimbi Alois and Joseph Sita Joseph, [2006] TLR 420**. Regarding the allegation that the applicant was denied the right to

bring his attendance register, Ma. Jumbe submitted that the applicant produced the attendance book of Kigilagila Primary School and not Muungano primary school thus. That the CMA was correct to reject such document because it had no relation to the matter at hand. She further submitted that the case cited by the applicant on the right to be heard is irrelevant to the circumstance at hand because the applicant was afforded the right to be heard. She therefore urged the court to dismiss the application for lack of merit. In rejoinder the respondent reiterated his submission in chief.

Having gone through the rival submission of the parties and Court records I find the court is called upon to determine whether the CMA properly held that there was no employment relationship between the parties herein. As submitted above, the applicant wants this court to fault the Arbitrator's findings that there was no employment relationship between the parties. In his submission the applicant alleged that he was denied the right to be heard and brought his evidence to support his allegation. Unfortunately, the applicant's contention is contrary with the CMA records. The CMA records shows that both parties were afforded the right to be heard on the existence of employment relationship and they all brought their evidence. The respondent brought three witnesses and tendered two exhibits to deny the applicant as his employee. On his

part, the applicant had no witness apart from himself and tendered only one exhibit to prove the employment relationship between the parties herein. Under the circumstance, I find the allegation on the right to be heard cannot stand.

Coming to the substance of revision, since the applicant is the one who is alleging to be the employee of the respondent, it is his duty to prove existence of such relationship. Thus, I join hands with the case of **Abdul-Karim Haji v. Raymond Nchimbi Alois and Joseph Sita Joseph** (supra) cited by Ms. Jumbe. The determining factors of employer/employee relationship are provided under section 61 of the Labour Institutions Act [CAP 300 RE 2019] ('LIA'). In this application the applicant wants this court to rely on a letter he wrote dated 30/09/2019 directed to the respondent claiming for his salary arrears (exhibit P1) to find that there was employment relationship between the parties herein. The alleged letter was not even replied by the respondent.

As pleaded in the CMA F1, the applicant prayed for salary arrears of 30 months from 01/08/2016 to 12/12/2019 which was not paid to him. Apart from such letter, the applicant did not tender any evidence to prove his allegation. There is no any document to prove the applicant's salary, his hours of work or any agreement which was entered between the parties. Not even a witness to make oral testimony that the

applicant was employed by the respondent. The nature of the applicant's claims of salary arrears suggests that the applicant was not paid salary from the commencement of his employment to the date of termination. Such allegation is questionable for a reasonable man to believe that an employee who is not paid salary for almost three years keeps on working with the same employer who is not paying him.

On her part, the 1st respondent tendered the letter of application for employment of his security guard (DW1) (exhibit D1) to prove the way of obtaining employment in the school. The respondent also tendered the payroll of his security guard, DW1 (exhibit D2) who was not the applicant.

Therefore, on the basis of the evidence on record, I am in agreement with the Arbitrator that the applicant failed to prove existence of employment relationship between him and the respondent. In the result, I find no justifiable reasons to fault the Arbitrator's findings. Consequently, this application is hereby dismissed.

Dated at Dar es Salaam this 27th April, 2022.




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S.M. MAGHIMBI
JUDGE