

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

**REVISION APPLICATION NO. 498 OF 2021**

*(Arising from an Award issued on 26<sup>th</sup> August 2021 by Hon. Kiangi, N, Arbitrator in Labour complaint No. CMA/DSM/KIN/849/19 at Kinondoni)*

**BETWEEN**

**PASTOLA SAGUMGANGA MWASAMILA .....1<sup>ST</sup> APPLICANT**  
**AMBAKISYE THOMAS LWESYA ..... 2<sup>ND</sup> APPLICANT**  
**HAPPINESS MBERITO MAGOVA ..... 3<sup>RD</sup> APPLICANT**  
**HAMISI HASHIMU MSALAMA ..... 4<sup>TH</sup> APPLICANT**  
**TOPHIANA ERNEST MKWALAKWALA ..... 5<sup>TH</sup> APPLICANT**  
**JAPHET JONATHANI NNKO ANAE ..... 6<sup>TH</sup> APPLICANT**  
**NURDIN SALUM SELEMANI ..... 7<sup>TH</sup> APPLICANT**  
**MSHAMU HAMISI MNALLY ..... 8<sup>TH</sup> APPLICANT**

**AND**

**ULTIMATE SECURITY TANZANIA LIMITED ..... RESPONDENT**

**JUDGMENT**

*Date of last Order: 29/06/2022  
Date of Judgment: 22/7/2022*

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

Brief facts of this application are that; all applicants were employees of the respondent at different capacities. It happened that their employment relationship did not go well, as a result, applicants filed labour complaint No CMA/DSM/KIN/849/19 before the Commission for Mediation

and Arbitration hence CMA at Kinondoni complaining that their employment contracts were terminated unfairly. On 28<sup>th</sup> November 2019, Pastola Sagumganga Mwasamila, the 1<sup>st</sup> applicant, filed a referral of dispute to the CMA hereinafter referred to as CMA F1 claiming to be reinstated or paid TZS 9,000,000/= as salary compensation for 18 months and TZS 4,000,000/= general damages complaining that his employment was unfairly terminated. Ambakisye Thomas Lwesya, the 2<sup>nd</sup> applicant who was employed as Junior installation technician, filed CMA F1 on 29<sup>th</sup> November 2019 claiming to be reinstated or to be paid TZS 18,000,000/= as 30 months' salary compensation and TZS 9,000,00/= general damages. On the other hand, Happiness Mberito Magova, the 3<sup>rd</sup> applicant who was the Registry Clerk, filed CMA F1 on 28<sup>th</sup> November 2019 claiming to be reinstated or be paid TZS 10,350,000/= as salary compensation for 30 months and TZS 6,000,000/= general damages. Hamisi Hashimu Msalama, the 4<sup>th</sup> applicant, who was employed as the mechanics, filed CMA F1 on 28<sup>th</sup> November 2019 claiming to be reinstated or be paid TZS 10,368,000/= as salary compensation for 24 months and TZS 7,000,000/= general damages. Thophiana Ernest Mkwalakwala, the 5<sup>th</sup> applicant, who was employed as paramedic II, filed CMA F1 on 29<sup>th</sup> November 2019 claiming to be reinstated or be paid TZS 20,088,000/= as salary

compensation for 36 months and TZS 50,000,000/= general damages. Japhet Jonathani Nnko Anae, the 6<sup>th</sup> applicant, who was employed as Operation officer filed CMA F1 on 28<sup>th</sup> November 2019 claiming to be reinstated or be paid TZS 72,000,000/= as salary compensation for 96 months and TZS 8,000,000/= general damages. Nurdin Salum Seleman, the 7<sup>th</sup> applicant, who was employed as Mechanics, filed CMA F1 on 29<sup>th</sup> November 2019 claiming to be reinstated or be paid TZS 16,000,000/= as salary compensation for 30 months and TZS 5,000,000/= general damages while Msham Hamisi Mnally, the 8<sup>th</sup> applicant, who was employed as investigation officer, filed CMA F1 on 28<sup>th</sup> November 2019 claiming to be reinstated or be paid TZS 12,000,000/= as salary compensation for 24 months and TZS 5,000,000/= general damages. Apart from the aforementioned applicants, other persons who filed CMA F1 claiming to be reinstated or paid salary compensation at different rates and general damages are Joseph Pius Mawanja, Jenifer Mdigo, Oscar Kinyota, Solomon Herbert Mnkondya and Charles Michael Mtemi. Unfortunately, Charles Michael Mtemi died before conclusion of hearing at CMA leaving the dispute to proceed with 12 complainants.

On 26<sup>th</sup> August 2021, Kiangi, N, Arbitrator, issued an award that applicants signed an agreement to terminate their fixed term contracts

hence there was no unfair termination. The arbitrator held that applicants were paid salary for the remaining period of their contracts and that they had no claim against the respondent.

The aforementioned applicants were aggrieved by the said award, as a result, they filed this application seeking the court to revise it. In their joint affidavit in support of the application, applicants raised two grounds namely: -

- 1. Trial Arbitrator erred in law and fact for failure to assign reasons as to why he failed to consider Applicant's Exhibit "TLL3" and resort to consider respondents arguments.*
- 2. Trial Arbitrator erred in law and facts for failure to analyze properly evidence on record hence reached adverse decision against the applicants.*

In opposing the application, respondent filed the counter affidavit sworn by Tatu Elias, her Human Resources Officer.

When the application was called for hearing, Mr. Denis Mwamkwala, the Personal Representative of the applicants appeared and argued on their behalf while Hassan Mwemba, Advocate appeared and argued for and on behalf of the respondent.

Mr. Mwamkwala, personal representative of the applicants argued the two grounds jointly. On the merit of the application, Mr. Mwamkwala

submitted that applicants were employed under fixed term contract starting from 22<sup>nd</sup> June 2018 and expiring on 22<sup>nd</sup> June 2020. He went on that, on 31<sup>st</sup> October 2019, parties entered into release agreement (exh. D2) and payment of salary for the remaining period of the contract. Mwamkwala submitted further that, the amount that was paid to each applicant was TZS 7,721,138/= as evidenced by exhibit D3. He submitted further that; applicants were not paid salary for October 2019 that could have made the amount payable to each applicant to be 8,471,138/=. He argued that each applicant was not paid TZS 750,000/= and concluded that the arbitrator erred to hold that applicants were paid in accordance with the release agreement.

Mr. Mwemba learned counsel for the respondent submitted that each applicant was paid according to contract he or she entered. He submitted that the contract of the 6<sup>th</sup> applicant commenced on 22<sup>nd</sup> June 2018 expiring on 22<sup>nd</sup> June 2020, but the said applicant entered early release agreement on 30<sup>th</sup> October 2019. He went on that the 6<sup>th</sup> applicant was paid for the remaining period from November 2019 to June 2020. Mr. Mwemba learned counsel for the respondent submitted further that, the contract of the 2<sup>nd</sup> applicant commenced on 27<sup>th</sup> September 2017 expiring on 26<sup>th</sup> September 2019, but 2<sup>nd</sup> applicant entered early release agreement

on 30<sup>th</sup> October 2019. He submitted that the 2<sup>nd</sup> applicant was paid for the remaining period from November 2019 to September 2021 because there was automatic renewal.

Mr. Mwemba went on that, the 3<sup>rd</sup> applicant's fixed term contract of employment started on 28<sup>th</sup> December 2017 and was expiring on 27<sup>th</sup> December 2019. That, upon termination of her employment, she was paid for the period from November 2019 to 27<sup>th</sup> December 2021 because she entered early release agreement on 30<sup>th</sup> October 2019. He submitted further that, the 4<sup>th</sup> applicant's contract of employment commenced on 02<sup>nd</sup> January 2017 expiring on 01<sup>st</sup> January 2019 and that there was automatic renewal after that period hence the contract was expiring on 1<sup>st</sup> January 2021. He went on that, the 4<sup>th</sup> applicant entered early released agreement on 30<sup>th</sup> October 2019. Counsel for the respondent submitted that the 4<sup>th</sup> applicant was paid for the remaining period from November 2019 to 01<sup>st</sup> January 2021.

Counsel for the respondent submitted that the 5<sup>th</sup> applicant's two years fixed term contract of employment commenced on 29<sup>th</sup> September 2017 expiring on 29<sup>th</sup> September 2018, but it was renewed automatically expiring on 28<sup>th</sup> September 2021. Counsel went on that, the 5<sup>th</sup> applicant

entered into early release agreement on 30<sup>th</sup> October 2019. He submitted further that 5<sup>th</sup> applicant was paid for the remaining period of the said fixed term contract from November 2019 to 28<sup>th</sup> September 2021. Counsel for the respondent submitted further that the 7<sup>th</sup> applicant's two years fixed term contract commenced on 27<sup>th</sup> January 2019 expiring on 26<sup>th</sup> January 2021 but on 30<sup>th</sup> October 2019 the 7<sup>th</sup> applicant entered early release agreement terminating the said contract. Counsel went on that the 7<sup>th</sup> applicant was paid for the remaining period of the said fixed term contract from November 2019 to 26<sup>th</sup> January 2021.

Mr. Mwemba learned counsel for the respondent submitted that the 8<sup>th</sup> applicant's two years fixed term contract commenced on 29<sup>th</sup> November 2017 expiring on 28<sup>th</sup> November 2019, but on 30<sup>th</sup> November 2019 the 8<sup>th</sup> applicant entered early release agreement terminating the said contract. Counsel for the respondent submitted further that, the 8<sup>th</sup> applicant was paid for the remaining period of the said fixed term contract from November 2019 to 28<sup>th</sup> November 2021. Mr. Mwemba submitted also that the 1<sup>st</sup> applicant's two years fixed term contract commenced on 14<sup>th</sup> October 2017 expiring on 13<sup>th</sup> October 2019, but it was renewed automatically expiring on 13<sup>th</sup> October 2021. Counsel submitted that on 30<sup>th</sup> October 2019, the 1<sup>st</sup> applicant entered into early release agreement

terminating the said contract and that 1<sup>st</sup> applicant was paid for the remaining period of the said fixed term contract from November 2019 to 13<sup>th</sup> October 2021.

Mr. Mwemba learned counsel for the respondent submitted further that, applicants admitted in their evidence at CMA that they were paid their entitlement according to the agreements they entered as shown in payment slips (exhibit D3) and release agreements (Exhibit D2). He went on that; the money applicants were paid were deposited in bank accounts of each applicant. He argued that none of the applicants brought at CMA a bank statement to show that the money was not credited. Counsel concluded by praying that the application be dismissed for want of merit.

In rejoinder, Mr. Mwamkwala, the personal representative of the applicants submitted that, applicants do not dispute payments from November 2019 to the remaining period of their two-years fixed term contracts. He contended that their dispute is that they were not paid salary for October 2019 that is gross salary of TZS 750,000/= each.

I have carefully examined the CMA record and considered submission of the parties in this application. From the submissions of the parties, it is undisputed that applicants had a two-years fixed term contract of



employment that was terminated on 30<sup>th</sup> October 2019. It is also undisputed that after termination of the said two-years fixed term contract, applicants and the respondent entered into early release agreement and that applicants were paid salary for the remaining period of their contracts. I have read evidence of Joseph Kandidus Goliama (DW1) for the respondent, Mishamu Hamis Mnali(PW1), Joseph Jonathan Nnko(PW2), Happiness Mbereto Magova(PW3), Tophiana Ernest Mkwalakwala(PW4), Ambakisye Thomas Lwesya(PW5), Nurdin Salum Salama(PW6), Hamisi Hashim Msalama(PW7) and Pastola Sagumganga(PW8) the only witnesses who testified for the applicants and find that all testified that parties entered early release agreement leading to termination of their contracts. All witnesses testified that each applicant was paid for the remaining period of the fixed contract after termination employment. It was submitted by Mr. Mwamkwala, the personal representative of the applicants that applicants were claiming to be paid TZS 750,000/= being salary for October 2019 which they were not paid. With due respect to Mr. Mwamkwala, none of the witness who testified on behalf of the applicant stated so in his or her evidence. More so, none of the applicants indicated in his or her claims in the CMA F1 that he/she was claiming to be paid TZS 750,000/= being salary for October 2019. Since this was not a claim at

CMA, it cannot be brought at this stage because parties are bound by their pleadings as it was held in the case of ***George Shambwe v. AG and Another*** [1996] TLR 334, ***The Registered Trustees of Islamic Propagation Centre (Ipc) v. The Registered Trustees of Thaaqib Islamic Centre (Tic)***, Civil Appeal No. 2 of 2020, CAT (unreported) and ***Astepro Investment Co. Ltd v. Jawinga Company Limited***, Civil Appeal No. 8 of 2015, CAT (unreported) to mention but a few. That being the position, submissions by Mr. Mwamkwala that applicants were claiming to be paid TZS 750,0000/= as salary for October 2019 is not born out of evidence. It is submissions from the bar, which, is not evidence, as it was held in the case of ***Dr. A Nkini & Associates Limited v. National Housing Corporation***, Civil Appeal No 75/2015, ***Republic v. Donatus Dominic @ Ishengoma & 6 Others***, Criminal Appeal No. 262 of 2018, ***Morandi Rutakyamirwa v. Petro Joseph*** [1990] T.L.R 49] and ***The Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman Bunju Village Government***, Civil Appeal No. 147 of 2006 to mention but a few. In ***Bunju Village's*** case (supra) the Court of Appeal held: -

*"... submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on*

*evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence”.*

Since the claim of TZS 750,000/= as salary for October 2019 was not among the claims by the applicants at CMA, and since there is no evidence to that effect, I dismiss that claim for being unfounded. I tried to point out at the beginning of this judgment what each applicant indicated in the CMA F1 as his or her claims. From the CMA record, the claim for October 2019 was not substantiated and cannot detain me in this application.

In the joint affidavit, applicants criticized the arbitrator that he failed to analyze properly evidence of the applicants. I have gone through the CMA record and the CMA award and find that the arbitrator analyzed evidence and arrived at a proper conclusion that applicants had no claim against the respondent because they were paid their entitlements as reflected by evidence of the parties. I therefore dismiss the 2<sup>nd</sup> ground of revision.

In the 1<sup>st</sup> ground, it was complained by the applicants that the arbitrator failed to assign reasons as to why he failed to consider Applicant's Exhibit "TLL3" and resort to consider respondent's arguments. I have examined the CMA record and find that there is no exhibit that was tendered by the applicants that was admitted and marked as TLL3. In

connection to that, there. Is no suggestion that applicants attempted to tender an exhibit and that their attempt failed. Therefore, the complaint that the arbitrator failed to consider exhibit TLL3 bears no support. I therefore dismiss this ground too.

For all what I have discussed hereinabove, I dismiss this application for want of merit.

Dated at Dar es Salaam this 22<sup>nd</sup> July 2022.



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

Judgment delivered on this 22<sup>nd</sup> July 2022 in the presence of Denis Mwamkwala, Personal Representative of the applicants and Hassan Mwemba, Advocate for the respondent.



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

