

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

REVISION NO. 373 OF 2021

BETWEEN

BIDCO OIL AND SOAP LTD APPLICANT

VERSUS

BUYOYA ELIAS KALIMANZILA RESPONDENT

JUDGEMENT

S. M. MAGHIMBI, J.

The dispute, a subject of this revision, emanates from the following background; the respondent was employed by the applicant as a Production Operator since 16th November, 2016 on permanent contract. In the year 2017 the respondent's contract changed from permanent to that of a fixed term contract of one year subject to renewal. On 16/05/2019 the respondent was terminated from employment on what the applicant alleges to be a mutual agreement. Aggrieved by the termination, the respondent referred the matter to the Commission of Mediation and Arbitration alleging unfair termination. The CMA's award was in favour of the respondent whereby the applicant was ordered to pay the respondent a total of TZS. 6,082,564/- being twelve months salaries as compensation for the alleged unfair termination leave

allowance, payment of severance allowance and salary for the days worked for in the month the respondent was terminated.

Dissatisfied by the CMA's award, the applicant filed the present application urging the court to revise and set aside the award on the following grounds:-

- i. Whether it is legally correct for the honourable Arbitrator to consider the dispute was preferred by the complainant challenging unfair termination contrary to section 38(1) of the Employment and Labour Relations Act [CAP 366 RE 2019] ('ELRA').
- ii. The Arbitrator erred in law and fact by taking into consideration matters which were not in dispute for termination.
- iii. Whether it was proper for the Honourable Arbitrator to ignore and failed to consider documentary evidence tendered by the applicant and admitted by the Commission.
- iv. Whether it was proper for the honourable Arbitrator to grant 12 months remuneration without regarding termination was by way of agreement, without any basis of calculation and by regarding proof of payment voucher dated 16th May, 2019.

- v. Arbitrator erred in law and in fact by bias evaluation of evidence and ignoring evidence adduced by both parties without any reasons.
- vi. Whether it was legally correct for the Honourable Arbitrator to give the claims to respondent which were not claimed for by the respondent in CMA FORM NO. ONE.
- vii. Whether it was legally correct for the Honourable Arbitrator to give notice of termination, severance pay, leave and one month salary while respondent had already received the same.

The application was argued by way of written submission. Before this court, the applicant was represented by Ms. Victoria G. Mgonja, learned Counsel. On the other hand, the respondent appeared in person and unrepresented. Notwithstanding his attendance to court, the respondent neither filed a counter affidavit nor written submission to challenge this application. Pursuant to Rule 37 of the Labour Court Rules, GN. No. 106 of 2007 ("the Rules") this court hereby proceeds to enter an ex parte judgement.

In his submissions to support the first ground, Ms. Mgonja submitted that the respondent was terminated from employment by

agreement after shortage of work at the company pursuant to Section 38(1) of the Employment and Labour Relations Act, Cap. 366 R.E 2019 ("ELRA"). As to the second and sixth grounds, the counsel submitted that the respondent prayed for compensation for breach of contract however, the Arbitrator wrongly awarded him compensation for unfair termination. Regarding the third and fifth grounds, Ms. Mgonja submitted that the applicant tendered evidence which were admitted at the CMA to prove that there was termination agreement.

Turning to the fourth ground Ms. Mgonja reiterated her submission on the first ground and added that upon termination, the respondent was dully paid his terminal benefits as reflected in exhibit D3. She argued that the Arbitrator wrongly awarded the respondent as the respondent was supposed to be awarded in accordance with her salary only and not salary plus allowances. To support her submission, she cited the case of **Shoppers Supermarket Ltd vs Innocent B. Vicent and Another (Revision Application 63 of 2020) [2021] TZHCLD 282 (29 June 2021)**.

On the last ground, Ms. Mgonja reiterated her submissions on the fourth ground and urged the court to revise and set aside the CMA's award.

After going through the applicant's submissions, court records and relevant laws, I find the court is called upon to determine the following issues; whether there was termination by agreement in this case and what are the parties' reliefs.

Termination by agreement is recognized in our labour laws as it is provided under Rule 3(2)(a) and 4(1) of the Employment and Labour Relations (Code of Good Practice) Rules GN. No. 42 of 2007 ("the Code"). Ms. Mgonja strongly argued that there was termination by agreement which is reflected in exhibit D2. I have examined the alleged exhibit, it is the minutes of the consultation meeting between the respondent and the applicant's officers and there is no word indicating that the parties reached to mutual agreement to terminate the employment contract. As rightly found by the Arbitrator, the applicant failed to prove the alleged agreement entered between the parties.

Further to the above, in the termination letter (exhibit K1), the applicant did not state any reason for termination. He only referred to the meeting held on 16/05/2019 which as held above, there was no such mutual agreement by the parties. I have noted Ms. Mgonja's submissions that the respondent was terminated pursuant to section 38(1) of ELRA. The cited provision provides for termination based on

operational requirement which is not reflected in the termination letter (exhibit K1) in this case. Therefore, the submission thereto is irrelevant. It is conclusive that the respondent's termination was unfair both procedurally and substantively hence a breach of the contract.

Turning to the last issue on the parties' reliefs, the CMA awarded the respondent 12 month's salaries as compensation for unfair termination, salary for the days worked for in the terminated month and leave allowance. On his part the applicant is strongly disputing the awarded reliefs. In this case though the employment contract was not tendered at the CMA, during cross examination the respondent admitted to have had a fixed term contract of one year. From the evidence gathered on the records, the first fixed term contract entered by the parties commenced on 11/06/2017, since the same was for one year the same ended on 10/06/2018. When the said contract expired there is no written proof that they entered into another contract, however, since the record indicates that the respondent continued to work after expiry of his contract it is safe to conclude that there was an automatic renewal. Therefore, the second contract is purported to have commenced on 11/06/2018 and was supposed to end on 10/06/2019. On such basis, I

find that contrary to what the arbitrator awarded, the respondent is entitled to the salaries for the remaining period of the contract since he was in a fixed term contract.

As analysed above, since the respondent was terminated on 16/05/2019 whereas the contract was to end on 10/06/2019 the remaining period is only one month. I have equally considered Ms. Mgonja's contention that the respondent is supposed to be paid in accordance with his allowance only. Normally the compensation in labour cases is awarded in accordance with the employee's remuneration which includes the allowances entitled to the particular employee so long as they were paid as part of his salary. Therefore, in this case the Arbitrator properly considered the respondent's remuneration.


For the reasons stated above, I find the present application to have partly succeeded. The CMA's award is hereby revised, the award of 12 month's salaries as compensation for unfair termination is quashed. Equally, the award of severance pay is quashed and set aside as the respondent was on a fixed term contract of one year hence he is not entitled to the same, in accordance with Section 43 of ELRA. However, since there was a breach of the contract, the applicant is ordered to pay

the respondent one-month's remuneration as compensation for the remaining period of the contract and one month's salary as payment in lieu of notice. Since the applicant's salary was Tshs. 400,000/- then the applicant shall pay the respondent a total of Tshs. Eight hundred thousand (800,000/-). I find no justifiable reason to revise the payment of leave allowance thus, the same is hereby confirmed.

It is so ordered.

Dated at Dar es Salaam this 20th July, 2022.




.....
S.M. MAGHIMBI
JUDGE