

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

**REVISION NO. 341 OF 2021**

**ANDO ROOFING PRODUCTS LIMITED ..... APPLICANT**

**VERSUS**

**FREDINARND MASHAURI CHIGUMA ..... RESPONDENT**

*(From the decision of the Commission for Mediation and Arbitration at DSM Kinondoni)*

(Ng'washi: Arbitrator)

Dated 25<sup>th</sup> June, 2021

in

REF: CMA/DSM/KIN/384/2020/299

**JUDGEMENT**

26<sup>th</sup> July & 19<sup>th</sup> August 2022

**Rwizile, J**

In this application, this Court has been asked to: -

1. Revise, quash and set aside the award on Labour Dispute No. CMA/DSM/KIN/384/2020/299 of the Commission for Mediation and Arbitration (CMA)
2. To order any other reliefs to be deemed fit and just to be granted.

Factually, the respondent was an employee of the applicant who was working under three months' probation contract. The contract

commenced on 01<sup>st</sup> April, 2020 to end on 30<sup>th</sup> June, 2020. Few days after commencement of work, he could not work as per the terms of the contract. The applicant was terminated and was paid a notice according to the terms of the contract. Aggrieved, the respondent filed a labour dispute at CMA. The award was in favour of the respondent, hence this application.

The application is supported by the applicant's affidavit sworn by Adobeth Zabron Maimu, advancing grounds for revision as hereunder;

- i. That the arbitrator erred in law and fact for delivering an award from a defective pleading (CMA Form No. 1) as the respondent filed part A and B of the said form while claiming for breach of contract.*
- ii. The arbitrator erred in fact and in law for awarding in favour of the respondent without considering the evidence and arguments adduced by the applicant.*
- iii. That the arbitrator erred in fact and law by delivering illogical and improper award.*

The hearing proceeded orally. The respondent engaged Remmy Ephraim William, Oliva Mkanzabi and Rebecca Julius, learned Advocates from Talented Advocates. The matter was scheduled for hearing on 26<sup>th</sup> July,

2020, the Human Resource Manager, one Ibrahim Gamba appeared for applicant. Neither the learned Advocates for the respondent nor the respondent himself appeared. The application was therefore heard ex parte.

Mr. Gamba on the first ground submitted that CMA Form No. 1 is defective. He stated that it is so because the respondent stated that the dispute was of breach of contract. For him, the respondent was supposed to only fill part A of the form but he filled both part A and B.

He continued to argue that part B is only filled for disputes of unfair termination. He supported his submission by citing the case of **Bosco Stephen v Ng'amba Secondary School**, Revision No. 38 of 2017, High Court at Mbeya.

On the second ground, he submitted that their evidence was not considered. He stated that they presented all evidence to prove that the respondent was a probationary employee. He added, the procedure was followed to terminate the employment contract of the probationary employee following terms of the contract. It was argued, the same paid the respondent one-month salary.

On reasons for termination, he cited the case of **Commercial Bank of Africa (Tanzania) Limited v Anganile Mwankuga**, Revision No. 758 of 2019, High Court at Dar es Salaam.

Mr. Gamba submitted on the third ground that the award was not justified. He was of the view that since it was ruled out that the respondent was a probationary employee. Thus, it cannot be proper to file a dispute under termination of contract. He stated that, the act was contrary to section 25 of Employment and Labour Relations Act [CAP.366 R.E. 2019]. To cement his submission, he cited the case of **David Nzaligo v National Microfinance Bank PLC**, Civil Appeal No. 61 of 2016, Court of Appeal of Tanzania at Dar es Salaam. He finally prayed for the application to be granted.

After going through the pleadings, submissions, CMA proceedings and exhibits, this court, I find, has been called upon to determine: -

- i. *Whether the respondent was a probationary employee. If the answer is in the affirmative;*
- ii. *Whether procedure for terminating a probationary employee was followed*

In responding to the first issue, I have to start with exhibit A1, which clearly states;

*"Dear Fredinarnd*

**REF: APPOINTMENT CONTRACT**

**Effective date**

*Your three months (3) under probation appointment commences with effect from 01<sup>st</sup> April 2020.*

**Probation Period**

*You are subject to a probation period of three months (3) with effect from 01<sup>st</sup> April 2020 to 30<sup>th</sup> June 2020. During this period, the employer shall evaluate and regularly review the employee performance and if the employee completes the period satisfactorily, the employer will issue a confirmation letter to the employee which will be signed by both parties."*

From exhibit A1, it shows that the probation period was supposed to end on 30<sup>th</sup> June, 2020. But the respondent was terminated on 30<sup>th</sup> April 2020 as exhibit A2 (Acknowledgement of Receipt of Final Payment) which shows payments made to the respondent after being terminated. On the first issue raised, it has been proved that the employee was on probation.

On whether the procedure for terminating a probationary employee was followed. The form to initiate proceedings is CMAF1. Going through records of CMA, it has been found that the form has been filled in part A and B as claimed by Mr. Gamba. Part B is supposed to be filled by an employee alleging to be unfairly terminated and not for a probationary employee. This has been provided under section 35 of [CAP. 366 R.E. 2019], which states: -

*"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 contracts."*

In the case of **Bosco Stephen** (supra) at pages 5-6, it was held that: -

*"I have gone through CMA Form 1 particularly Part B which is the centre of the contention between the learned counsel. This part is an additional form for disputes based on termination of employment contract only. ... in plain meaning this part is to be filled by an employee where the claim is on termination of employment and nothing else. Looking at this part, it is crystal clear that the Applicant/Complainant filled this part of the form as well..."*

As said, part B, deals with instances of unfair termination. The CMA was therefore not obliged to examine the part that was filled in default. In my considered view, I do not think, filling in this parts A and B of CMAF1 renders the entire application defective. It is so because, the claims of the applicant were fully stated in part A which he fully filled. It is therefore not plausible in my view, to hold that the filling Part A and B rendered the entire application incompetent before the CMA as submitted by the applicant.

Lastly, I have stated before that the applicant as a probationary employee, which is not also disputed by both parties, is not protected by section 37 of the Employment and Labour Act. The CMA was wrong to apply the provisions of the law as if the applicant had passed the period of probation which is governed by section 35 of the same Act. To sum, this court therefore finds the application to have merit. In fine, I hereby quash the award and set aside CMA proceedings and orders therefrom. As this is the labour matter, each party has to bear own costs.



  
**A.K. Rwizile**

**JUDGE**

**19.08.2022**