

**IN THE UNITED REPUBLIC OF TANZANIA
HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DARES SALAAM**

REVISION APPLICATION NO 410 OF 2021

*Arising from the Labour Dispute No. CMA/DSM/ KIN/ 190/ 2020 of the Commission for Mediation and Arbitration at Dar es Salaam by **Hon. Wilbard G.M (Arbitrator)**,
Dated 31ST AUGUST 2021*

BETWEEN

DHIRENDRA PRATAP SENGARAPPLICANT

VERSUS

CENTRAL ELECTRICALS INTERNATIONAL LIMITEDRESPONDENT

JUDGMENT

K. T. R. Mteule, J

15th August 2022 & 31st August 2022

This is an application for Revision in which the Applicant is seeking for the Court to call for the records of the Labour Dispute No. CMA/DSM/KIN/190/2020 of the Commission for Mediation and Arbitration at Dar es Salaam, Kinondoni, revise and set aside the Award issued therein by Hon. Wilbard G.M dated 31st August 2021 for being unlawful, illogical, and self-contradictory. The Application is supported by an affidavit sworn by the applicant.

The facts of the matter as extracted from the CMA record, and parties sworn statements and submission, the Applicant was employed by the Respondent as a Project Manager on a contract of two years which was

renewed once. He was getting monthly salary to the tune of USD 3,500.00. In September 2019, the Applicant felt sick and was required to undergo an abdomen surgery, in India.

It is alleged by the Applicant in his affidavit that while on sick leave, he was issued with a Notice of Termination of his Employment informing the Applicant that due to operational reasons the Applicant's service was to be suspended on 3rd January 2020. Further allegations tell that after his sick leave the Applicant went back to the office and continued to work, even after 3rd January 2020 which was indicated in the termination letter to be the last day of his service, until 25th February 2020, when the Respondent issued another termination letter and confiscated the Applicants tools and require him to move from the House provided to him by the Respondent.

Being dissatisfied with the termination, the Applicant referred his complaint in the Commission for mediation which was lodged on 26th Feb 2020 claiming for TZS 166,787,500 being compensation in reference to unfair termination, which encompasses, Payment in Lieu of Notice, Leave Pay, Severance pay, statutory compensation for unfair termination, as well as Outstanding Bonus. The CMA *suo moto*, raised

an issued of time limitation and found the Application to be time barred consequently dismissing it.

Being aggrieved with the dismissal, the Applicant preferred this revision application. In his affidavit to support this Application the Applicant raised 3 issues which will form the grounds of revisions. The issues are:-

1. Whether the Applicant's service was terminated on 03rd January 2020 or 25th February 2020.
2. Whether following the Applicant's termination, the Labour dispute at CMA was lodged out of time?
3. Whether the Applicant's Employment was fairly substantially and procedurally terminated?

This Application was filed on 20th October 2021 but only once the Respondent's appearance was recorded, that is on 22 March 2022 when Advocate Marcel Kanon appeared. From there, there has never had appearance from the Respondent. Having noted that the Respondent was served with summons since 22 November 2021 with one appearance from the counsel, I was satisfied that she was duly served and aware of this revision but opted neither to file opposition nor to appear in court. Consequently, I ordered the matter to proceed ex-parte and by a way of written submission.

The Applicant is represented by Ms. Rita Mahoo Advocate from Neptune Law Attorneys. Submitting as to whether labour dispute No. CMA/DSM/KIN/190/2020 was filed out of time, Ms. Rita submitted that challenged the arbitrator's counting of dates from 3rd January 2020 when the first notice of termination expired.

According to Ms. Rita, after the expiry of first notice of termination, the Applicant was not actually terminated instantly but continued to work. She alerted that the Respondent issued another termination letter which was tendered and admitted as **Exhibit D8** which followed by the Respondent's cancellation of the Applicant's Work Permit and Resident Permits on 26th February 2022. She referred to Exhibit D7 to substantiate this fact.

Referring to **Regulation 10 (1) of the Labour Institutions (Mediation and Arbitration) Rules 2007 (GN. 64 of 2007)** Ms Rita contended that in light of this provision, the Applicant was terminated on 26 February 2020 when he was finally expelled from the office and issued with a final termination letter purportedly termed as completion of handover (**Exhibit D8**) as well as cancellation of his work permit being triggered by the Respondent (**Exhibit D7**).

According to Ms. Rita much as the Applicant lodged the labour complaint on 9th March 2020 he was within time as guided by the law. She indicated to have been disappointed by the Arbitrator's dismissal of the matter on technicalities on the grounds unreasonably raised *suo motu* while the Application was already fully heard, with all the evidence tendered and admitted as well as testimony from witnesses being completely given.

It is Ms. Rita's view, given the fact that the Applicant is no longer in the country as his immigration status was cancelled by the Respondent, it is in the interest of justice that this Court proceeds to determine the rights of the Parties and bring this matter to its finality by considering the evidence already given and issue appropriate orders as prayed in the CMA F1. She prayed for this Court to set aside the CMA Award and proceed to give appropriate orders.

I have considered the facts of this application and the submissions by the Applicant and gone through the CMA award. The application is challenging the arbitrator's decision to raise *suo moto* the issue of time limitation and dismiss the Application and raise an issue as to whether it was proper to hold that the termination took place on 3/1/2020. It appears that the ending time of the Applicant's employment is the main

debate in this matter. The process went through some stages. It is not disputed that the Applicant was initially on **4th October 2019** issued with a letter titled "Notice of Termination of employment Contract" which informed him that his last day in work was to be **3rd January 2020**. This was a three months' notice to terminate the Applicant's employment. It is on record that on a certain arrangement which was not fully disclosed, on 25 February 2020 the Applicant was issued with another letter (**Exhibit C6**) which informed him as I quote;

"due to ongoing discussions and long handover process, it was agreed that the period of handover shall be extended hence the last day of handover shall be 29th February 2020". The letter informed further as I quote "You will be provided with flight ticket to India for departure on 1st March 2020. We are preparing to send you dues (Outstanding salary up to 29 February 2020, outstanding leaves and severance pay)".

From the contents of the latter (Exhibit C 6) the Applicant had an extended employment relationship beyond 3 January 2020 which was the initial last day specified in the first letter of notice of termination. The extended period constitutes employment relationship because the Respondent's letter of 25th February 2020 indicate that the Applicant will

receive salary up to 29th February 2020. There could have been no payment if no employment relationship. This means that the employment of the Applicant did not end on 3/1/2020 as found by the arbitrator but it extended to 25th February 2020.

Now the question to be answered is whether the **Labour Dispute No. CMA/DSM/ KIN/ 190/ 2020** was time barred. Regulation 10 (1) of the Labour Institutions (Mediation and Arbitration) Rules 2007 (GN. 64 of 2007) provides as quoted hereunder: -

"The Disputes about the fairness of an employee's termination of Employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate".

From the above provision, deadline for lodging the labour dispute in the CMA counting 30 days from the 29th February 2020 falls on 23 March 2020. The Labour dispute was lodged on 9th March 2020 which is before the deadline. Therefore, the Labour Dispute No. CMA/DSM/ KIN/ 190/ 2020 was filed within time.

In the last issue, Ms Rita prayed for the court to grant the relief sought by the arbitrator. In my view, since the application was not heard substantively by the CMA, the court will be clothing itself with a jurisdiction ought to be enjoyed by a first instance forum which is the CMA, if this prayer is allowed. In this regard, the appropriate measure is for the CMA to proceed with judgment basing on the existing evidence adduced therein.

In the result, the award issued in Labour Dispute No. CMA/DSM/ KIN/ 190/ 2020 is hereby set aside. The original record is hereby returned to the Commission for Mediation and Arbitration with an order for another arbitrator to compose judgment basing on the available facts and evidence.

It is so ordered.



KATARINA REVOCATI MTEULE

JUDGE

31/8/2022