IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 256 OF 2021

BETWEEN

SHREE HINDU MANDAL EDUCATION BOARD.....APPLICANT

VERSUS

SYLVIA MASSAWE.....RESPONDENT

JUDGEMENT

K. T. R. MTEULE, J.

19th August, 2022 & 02nd September, 2022.

This Revision application emanates from the decision of the Commission for Mediation and Arbitration of Dar es salaam at Ilala (CMA) in Labour Disputes No. CMA/DSM/ILA/771/20/169/21 dated 11th May 2021 Delivered by Hon. Chacha, L. The Applicant **SHREE HINDU MANDAL EDUCATION BOARD,** is seeking for this Court to call for the CMA record, revise and set aside the award made therein. The Applicant further prays for the Court to quash the said award and make any other order as deemed just and equitable to grant.

The facts leading to this application can be briefly explained as follows. On different fixed term contracts, the applicant was employed by the respondent as Accountant. The latest contract commenced from 1st

January 2019 where the Respondent was paid less salary compared to the previous contracts. In her opening statement in the CMA, the Applicant claimed that her salary changed from TZS 3,034,500.00 to TZS 2,210,000.00. Being dissatisfied with the payment, the Respondent instituted the above-named labour dispute in the CMA seeking for interpretation of the agreement and claiming a breach of contract.

In the CMA, it was alleged by the Respondent that the new terms of contract were not negotiated, and they were set without her consent. She complained against the employer for having deducted her salary with no justifiable reason.

The arbitrator having taken note of the length of time the applicant and the respondent stayed in employment relationship which started since 1987, with several renewals based on the same terms and conditions and formed opinion that, it was improper for the employer to reduce the salary overnight without involving the Respondent. The arbitrator awarded 24 months compensation and arrears of her salary deductions. The applicant being resentful of that decision she filed this application for revision. The Application is supported by the affidavit deponed by **Rakshita Vaya** the CEO of the Applicant. In the affidavit eight issues have been raised which will be considered to constitute grounds of

revision in this application. The issues are: -

1. Whether the Honourable Arbitrator erred in law and fact in holding that the applicant had no legal justification to review the salary while the Applicant and Respondent had entered into a new contract;
2. Whether the Honourable Arbitrator failed to analyse the evidence brought before her hence reaching an illogical and irrational award;
3. Whether Honourable Arbitrator erred in law and fact by analysing and determine matters which were not raised during the course of hearing;
4. Whether the Honourable Arbitrator erred in law and fact in holding that the applicant failed to adhere with proper procedures as required by law and applied unfair legal practice;
5. Whether Arbitrator erred in law and fact by awarding the respondent 24 month salary which is excessive, illegal and irrational;
6. Whether trial arbitrator erred in law while determining the matter on unfair labour practice, she failed to analyse and consider the whole evidence on record rather she based on her

own opinions and assumptions.

7. Whether the Honourable Arbitrator erred in law and fact in computing respondent's 24 months' salary to TZS, 111,033,648/= which computation is incorrect and excessive;

8. Whether the Honourable Arbitrator erred in law and fact by awarding the respondent salary arrears of TZS 26,047,000/= an amount which is incorrectly computed;

During hearing both parties were represented. Ms. Chiku Chande, Learned Counsel, was for the applicants while Mr. Denis Mwamkwala, appeared as Personal Representative for the respondent. The matter proceeded by way of written submission.

Submitting in support of the application the applicant's Counsel consolidated grounds 2 with ground 6 while ground 5 was consolidated with ground 7 to argue them jointly respectively.

On the first issue relating to salary review Ms. Chande submitted that on 28th January 2020 parties agreed on new contract regarding remuneration as proposed by the applicant in accordance with **Section 15 (1) of the Employment and Labour Relation Act, Cap 366 R.E 2019**. She stated that the new contract was independent and not subject to the former contract as there was free consent of the parties

as stipulated under **Section 10 of the Law of Contract, Cap 345 R.E 2019**. On such basis she is of the view that parties are bound by their own terms of contract. Supporting this position she cited different cases including the cases of **David Nzaligo versus National Microfinance Bank PLC, Civil Appeal No. 61 of 2016, The Court of Appeal of Tanzania at Dar es Salaam; Mariam Maro v. Bank of Tanzania, Civil Appeal No.22 of 2017, Court of Appeal of Tanzania, at Dar es salaam, (unreported) and the case of Yara Tanzania Limited v. Catherine Asenga, Labour Revision No. 88 of 2020, High Court of Tanzania, at Dar es Salaam, (all unreported).**

The Applicant refuted the Respondent's allegation in the CMA that the Respondent was forced to sign the contract. In his view, this allegation was not proved. He faulted the arbitrator for having changed the terms of the parties' contract.

On second and sixth issue concerning analysis of evidence before the CMA, Ms. Chande submitted that the arbitrator erred in law in his findings by holding that there were unfair labour practices in adjusting respondent's salary while parties had their own fixed term contract signed on 28th January 2020 which have its own terms separate from the former ones.

Referring to paragraph 2 of page 11 of the CMA award, Ms. Chande argued that the arbitrator failed to justify unfair labour practices rather it was just her assumption. She is of the view that the evidence was not properly analyzed therefore this Court should interfere the discretional exercise of the CMA as was held in the case of **Veneranda Maro and Another vs Arusha International Conference Centre,** Civil Appeal No. 322 of 2020, Court of Appeal, at Arusha, (unreported).

On third issue asserting the an error on the part of arbitrator in analysing and determined matters which were not raised during the course of hearing, Ms. Chande submitted that the arbitrator was bound by the evidence and matters which were presented during the proceedings. Referring to paragraph 2 of page 9 of the CMA award, she stated that the arbitrator considered new facts of her own feelings and for that reason she is of the view that the arbitrator erred in law in reaching his decision.

Submitting of the fourth issue as to whether the Honourable arbitrator erred in law and fact in holding that the applicant failed to adhere to the proper procedure as required by law and applied unfair legal practices, Ms. Chande averred that the evidence adduced before the Court provided that the respondent was notified about the situation of the

applicant through the meeting and email, as stated at page 4 paragraph 2 of the award. In her view, the evidence adduced by the witness explains the situation before the employer justify the salary of the respondent and respondent consented by putting her signature on the employment contract.

Ms. Chande challenged the arbitrator for having termed the remuneration made under the new contract of 28th January 2020 as the deduction as per **28 (1) and (6) of the Employment and Lab our Relation Act, Cap 366 R.E 2019**, which in fact was not a deduction rather it was agreement in remuneration that was agreed by the parties.

Regarding propriety of reliefs in the CMA as covered the 5th and 7th issues, Ms. Chande submitted that the essence of awarding 24 months salaries to the respondent is illegal, excessive and irrational. In her view **Section 40 of the Employment and Labour Relations Act, Cap 319 R.E 2019** provides remedies for unfairly terminated employee. She averred that awarding 24 months as remuneration is contrary to the law as the Respondent was never terminated. She also challenged the computation by stating that even by taking the 3,000,000 salary times 24, one cannot get 111,033,648 but 72,000,000. She considered this award to be wrong mathematically and legally.

On ground eight, Ms. Chiku challenged the award of TZS 26,047,000 as salary arrears. In her view, the amount is incorrectly computed hence irrational, unjustifiable and illegal. Citing paragraph 2 on remedy number 1 as awarded by the Arbitrator, Ms. Chande averred that the amount cannot be justified mathematically and legally. She submitted that the amount which was agreed in the new employment contract signed on 28th January 2020 was TZS. 2,210,000 which leaves the gap of TZS. 824,000 and if it is multiplied by ten (10) months then it is 8,240,000.00 and not 26,047,000 as awarded by the Arbitrator.

Ms. Chande lastly prayed for this court to set aside the award and make an order quashing the said award by the CMA in **Labour Dispute No. CMA/DSM/ILA/771/20/169/21.**

Opposing the application Mr. Mwamkwala submitted that the contract dated 28th January 2020 is not known by the applicant because at the CMA, the applicant's witness (DW2) testified that he was not aware if the applicant changed her name from **Shree Hindu Mandal Education Board to Shree Hindu Mandal Schools**. He stated that the applicant's name is Shree Hindu Mandal Education Board as per the contract signed on 09th November 2018 and 05th January 2019 between Shree Hindu Mandal Education Board and Sylivia T. Massawe (the

employer) so he is of the view that Shree Hindu Mandal School is not a competent employer. According to Mr. Mwamkwala the contract dated 28th January 2020 is void as provided by section 11(2) of the Law of contract Act, Cap 345 R.E 2019.

Regarding the contract Mr. Mwamkwala submitted that the contract dated 28th January 2020 was not signed by a free consent of the Respondent since the Respondent did not accept to sign but forced to sign, as stated at paragraph 4 of page 3 of the award.

On the 2nd and 6th issue Mr. Mwamkwala submitted that it is not disputed that the Applicant deducted the Respondent's salary from TZS. 4,629.402/= (Exhibit P1) to TZS. 3,000,000/= which is unfair Labour Practice. In his view, the Arbitrator's Award was delivered due to the evidence brought before her so the unfair labour practice was legally justified due to evidence on record.

On third issue, Mr. Mwamkwala argued that the Respondent worked with the Applicant since 1987, on the same contract and on the same position, which is a long time, as stated at paragraph 2 of page 5 and paragraph 3 of page 6 of the Award Respectively. In his view, the fact which was reached by the Arbitrator that the relationship between the parties stated on 1987 and worked for a long time is not a new fact,

rather it is part of the proceeding.

On fourth issue regarding notification Mr. Mwamkwala submitted that the Respondent was not notified about the situation of the Applicant, and this was proved by the Applicant's witness (DW1) as it appears at paragraph 4 page 3 of the Award. He averred that the Respondent states that the presence of the contradiction of statements of the Applicant's witness (DW1 and DW2) proves the fact that, the Respondent salary was deducted unfairly and by force without free consent of the Respondent. Mr. Mwamkwala submitted that DW1 stated that, the one who made a decision to deduct the Respondent's salary is a School Board, while DW2 stated that the one who have decision on deducting the Respondent salary is DW1 (CEO) as stated at paragraph 2 and paragraph 3 of page 4 of the Award. He considered this as a contradiction of the Applicant's witness which proves that the Respondent salary was deducted unfairly.

On fifth issue Mr. Mwamkwala submitted that the Award was delivered under section 28(7) of the Employment and Labour Relations (CAP. 366 R.E. 2019) after the Applicant was found to have deducted the Respondent's salary by force without consent of the Respondent. Defending the Computation, Mr. Mwamkwala stated that if you compute

TZS 4,629,402.00 X 24 months you get TZS 111,205,648.00, therefore the Arbitrator computed according to the evidence on record.

Regarding the 7th issue of arrears difference in amount awarded, Mr. Mamkwala argued that the difference of TZS 4,689,402/= and TZS 3,000,000/= is TZS 1,629,402/= hence, if you multiply by 10 months the arrears is supposed to be TZS 16,294,020/= so the amount of TZS 26,047,020/= was made by clerical mistake.

Having gone through the parties' submissions and their sworn statements together with the record of the CMA, I am inclined to address two issues. The first issue is **whether the applicant has adduced sufficient grounds for this Court to revise the CMA award** issued in Labour Dispute No. CMA/DSM/ILA/792/20 and secondly, **to what reliefs are parties are entitled**?

In addressing the issue as to **whether the applicant has adduced sufficient grounds for this Court to revise the CMA award**, I will start to expound on the nature and status of the respondent's employment contract. It is not disputed that parties signed a contract which reduced the salary of the respondent. Parties argument departs on the freeness of the Respondent's will in signing the said contract. Was there any undue influence on the part of the respondent which

should have rendered the said contract superfluous? This is a question I am inclined to resolve. It is alleged by the Respondent that there was an undue influence, but this is vehemently disputed by the Applicant who is of the view that the Respondent signed the contract by free will. The Applicant's counsel averred that the disputed contract was lawfully entered by the parties as there was a consent between the parties regarding the remuneration.

On the other hand, the Respondent's Counsel averred that the contract was illegal as there was no consent between the parties. He further added that the respondent does not recognize the contract because the applicant's name is **Shree Hindu Mandal Education Board** as per the contract signed on 09th November 2018 and 05th January 2019 between **Shree Hindu Mandal Education Board** and **Sylivia T. Massawe** (the employer) so **Shree Hindu Mandal School** is not a competent party to the disputed contract hence the contract was void.

In addressing these questions, the meaning of contract needs to be explored. The relevant law in defining the term contract is the provision of **Section 10 of the Law of Contract, Cap 345 R.E 2019** which provide: -

> *"All agreement are contracts if they are made by free consent of parties, competent to contract, for a*

lawful consideration and with a lawful object, and are not hereby expressly declared to be void;"

In determining the validity of any contract parties owe duty to abide with those element as stipulated in the above provision. Having gone through the record especially the employment contract (Exhibit D-1) I noted that the contract was agreed between **Shree Hindu Mandal Education Board and Sylivia T. Massawe** which are litigants in this matter. It is not disputed that the respondent signed the disputed contract. What is in dispute is the fact that the Respondent signed the said contract without a free consent. It is alleged by the Respondent that the Respondent was forced to sign it.

I have gone through the evidence adduced in the CMA, I could not find the particulars of a force induced upon the Respondent to have her signing the contract. Unless good evidence is given to establish duress on the party in entering into contract, or the undue influence, the sanctity of a contract cannot be so easily interfered with by the court **(see David Nzaligo vs. National Microfinance Bank Plc, Civil Apeal No. 16 of 2016)**. The contract being a new agreement, the Applicant had a duty to read and understand the terms therein. Signing it implicates consent. The act of signing communicates a consent on the other party and therefore such other party has a right to rely on it and

enforce it. The wrong act of the Respondent's signing of the contract with unknown terms cannot be attributed to the Applicant. After signing, the respondent closed the doors of denying it unless tangible and clear evidence is given that she was induced to do so. I am guided by the **case of Mariam Maro Supra**.

The Respondent tried to advance an excuse that the contract involved a wrong party. It is not in dispute that the name appearing on the contract is the name of the institution with which the Respondent is working. As already said, could the respondent read the contract, she could have understood that she was signing it with the different name. In whatever name the contract bears, so long the Respondent signed it, the said contract is binding upon her. Any negligence of not reading before signing should not be interpreted to the detriment of the employer.

In such circumstances the respondent's allegation that the contract is invalid and void in unfounded. I find that the arbitrator erred in finding that there was undue influence on the Respondent to sign the contract.

With regards to reliefs, since it is undisputed that the respondent was under fixed term contract and that the last yearly fixed term contract agreed by the parties was on 1st January 2019 and the respondent

agreed on the same by signing it, then respondent's allegation regarding consent and salary areas lacks merit, this claim could have legal stance if the salary was changed in an existing contract contrary to what parties agreed and not in a new contract. In the case of **Hotel Sultan Palace Zanzibar vs. Daniel Laizer & Another**, Civil. Appl. No. 104 of 2004, where it was held: -

> *"It is elementary that the employer and employee have to be guided by the agreed terms governing employment. Otherwise, it would be a chaotic state of affairs if employees or employers were left to freely do as they like regarding the employment in issue."*

Basing on the above cited authority since parties agreed on the remuneration to be paid which was TZS 3,000,000/= as per Exhibit D-1 (employment contract), then it is unwise for this Court to interfere parties' agreement.

From the above findings I agree with the applicant's Counsel that the arbitrator failed to analyse the evidence before him especially Exhibit D-1 (employment contract). For that reason, I have to say the first issue answered negatively.

Regarding relief, since the first issue is answered negatively then I find nothing to award to the respondent. The applicant is entitled to have her revision application allowed.

On that basis this Court finds that the application filed by the applicant to have merit. The said application is allowed. The CMA award is hereby quashed and set aside. Each party to take care of its own cost.

It is so ordered.

Dated at Dar es Salaam this 02nd day of September, 2022.

KATARINA REVOCATI MTEULE

JUDGE

02/09/2022