IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 245 OF 2021

(From the Ruling of the Commission for Mediation and Arbitration of Dar es salaam at Kinondoni dated 19ᵗʰ day of March 2018 in Labour Dispute No. CMA/DSM/KIN/169/2020)
(By MAYALE D: Arbitrator)

BRIGHT CHOICE LIMITED ....APPLICANT

VERSUS

RAMADHANI ALLY ABEID ....RESPONDENT

JUDGMENT

K. T. R. MTEULE, J.

25ᵗʰ August 2022 & 8ᵗʰ September 2022

This is application for Revision is seeking for this court to call for the record of the proceedings of the Commission for Mediation and Arbitration of Dar es Salaam in Kinondoni (CMA) in **Labour Dispute No. Labour Dispute No. CMA/DSM/KIN/169/2020**, revise and quash the award delivered therein.

From the record of the CMA, the affidavit of the Applicant, the counter affidavit of the respondent and parties submissions, it appears that the Applicant was employed by the respondent as a driver from 12 March 2015 to 22 February 2020 when his employment came into an end. The ending of his employment

resulted into a dispute which was referred to CMA vide the aforementioned labour dispute. The applicant stated in the CMA that the Respondent just told him that, let their employment relationship ends smoothly and paid him the salary covering the days he worked and told him to go. The respondent on the other hand stated that it was the applicant who left without returning after getting an advance payment he asked to solve his personal problems.

Being unsatisfied with the way the employment ended, the Applicant preferred the labour dispute claiming to have been unfairly terminated.

The arbitrator found that there was no termination. The reasoning of the arbitrator was based on the fact that the applicant claimed to have been terminated orally by DW1 and DW2 who were not the director of the company. The arbitrator wondered as to why the applicant failed to consult the director. He considered the time between the date of the alleged termination to the date of filing of the labour dispute to constitute too short period to condemn the respondent for not having taken disciplinary action on the absence of the applicant.

However, the arbitrator found the act of the respondent to advance to the applicant an amount equivalent to the days he worked constituted unfair labour practice. Basing on this reasoning, the arbitrator awarded 3 months remuneration as compensation to the applicant to the tune of TZS 1,800,000.00.

This award aggrieved the Applicant who preferred this application seeking for revision.

The application was heard by oral submission where the Applicant's counsel Ms. Idda Lugakingira submitted that the arbitrator was wrong to award the amount while already found that there was no termination.

The respondent appeared in person and made a short remark that they agreed with the employer to think and come to meet on way forward and when he went there the applicant was told to go.

Having heard the parties and the CMA award, I entirely agree with the arbitrator in his finding that no proved termination in the respondent employment. I agree that the respondent could have explanation on what he did to secure a formal termination or any further response to confirm the oral termination. He made a rush to

CMA without hearing from the final authority of the employer. This makes it difficult to ascertain the existence of termination.

However, as submitted by the applicant's counsel, I as well could not see the rationale of the award based on what the applicant decided to help the respondent by advancing the salary for the work he did. I could not see the rationality of this arbitrator's opinion that the advance payment constituted unfair labour practice.

According to the Merriam Webster Online Encyclopedia, Legal Dictionary, (An Encyclopedia Britannica Company), unfair labour practice is defined as:-

> "any of various acts by an employer or labor organization that violate a right or protection under applicable labor laws.
>
> .... The unfair labor practices that are specified in the National Labor Relations Act are the following: 1) the interference, restraint, or coercion of employees in the exercise of their rights by an employer; 2) domination of a labor organization by an employer; 3) encouragement or discouragement of union membership by discrimination in hiring or conditions of employment by an employer; 4) discrimination against an employee for filing charges of or testifying regarding an unfair labor practice by an

employer; 5) refusal of an employer to bargain with the collective bargaining agent; 6) restraint or coercion of employers or employees by a labor organization; 7) coercion of an employer by a labor organization to discriminate against an employee; 8) refusal of a labor organization to bargain collectively with an employer; 9) engaging in illegal strikes or boycotts by a labor organization; 10) excessive or discriminatory initiation fees for a labor organization; 11) coercion of an employer by a labor organization to pay for work not done; 12) picketing by a labor organization to force an employer to recognize or employees to select another collective bargaining agent when there has already been an election."

From the above definition, to constitute unfair labour practice, there must be employer's breach of legal responsibility or procedure of a right of an employee. I could not see which practice was violated to result unfairness by applicant's salary advancement to the respondent. Even the arbitrator could not indicate any of such practice.

Since the respondent claimed unfair termination and that the said unfair termination was not proved, what the arbitrator ought to have done was to just dismiss the application in its entirety. There is no basis for the award of **TZS 1,800,000.00.**

In this regard, I revise the CMA decision in Labour Dispute No. CMA/DSM/KIN/169/2020 and quash the award therein and set it aside.

It is so ordered.

Dated at Dar es Salaam this 8th Day of September 2022

KATARINA REVOCATI MTEULE

JUDGE

8/9/2022