

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

REVISION APPLICATION NO. 243 OF 2022

(Arising from an award issued on 9/5/ 2022 by Hon. Ms. Eveline Tibenda, Arbitrator, in Labour dispute No. CMA/PWN/KBH/10/2022 at Kibaha)

LILIAN BENEDEMS..... APPLICANT

VERSUS

VIJALIWA VINGI SOCIETY..... RESPONDENT

JUDGMENT

Date of Last Order & judgment: 14/09/2022

B. E. K. Mganga, J.

In 2021 Ms. Lilian Benedems, the applicant entered a one-year fixed term contract of employment with the respondent as a teacher. She worked for the respondent until 15th January 2022 respondent terminated her contract on ground that the contract came to an end. Aggrieved with termination, on 7th February 2022 applicant knocked the doors of the Commission for Mediation and Arbitration where she filed Labour dispute No. CMA/PWN/KBH/10/2022 at Kibaha alleging that respondent breached the Contract.

On 9th May 2022, Ms. Eveline Tibenda, arbitrator, having heard evidence of both sides issued an award that there was no breach of contract. Dissatisfied with the award, on the second bite, applicant filed this application for revision. In the affidavit supporting an application for revision, applicant raised 5 grounds namely: -

- 1) Arbitrator erred in law and fact for not awarding compensation prayed for.*
- 2) Arbitrator erred in holding that procedure for termination were adhered to.*
- 3) No evidence was tendered to prove that the parties had several meetings to discuss performance of the applicant.*
- 4) The arbitrator erred in law and facts in holding that the contract of the applicant was never terminated.*
- 5) The arbitrator erred in holding that the contract ended on 31st December 2021 while termination letter was issued on 15th January 2022.*

When the application was called on for hearing, applicant appeared in person while respondent was represented by Mutalemwa Bugeza, learned Advocate.

Applicant argued the application generally that on 04th January 2021 she entered employment contract with the respondent as a teacher for a one-year fixed term contract. She submitted that she signed the said contract on 09th August 2021. Applicant went on that on 15th January 2022 she was terminated on ground that the contract

expired on 31st December 2021. She argued that respondent breached the contract and that procedures for termination of her contract was not followed by the respondent.

Responding to submissions made by the applicant, Mr. Mutalemwa, learned counsel for the respondent submitted that the respondent is a Society registered under the Society Act [Cap. 337 R.E. 2002]. Counsel for the respondent submitted that on 09th August 2021, applicant signed the volunteer contract showing that it was expiring at end of the year. Counsel for the respondent submitted that there are irregularities in the proceedings because exhibits were not received and marked but they are only reflected in the award. This affects the whole proceedings. I pray that proceedings be nullified and order trial *de novo* before a different arbitrator.

In rejoinder, applicant conceded to the legal issue raised by the Advocate that exhibits were neither admitted nor marked but are only reflected in the award. She therefore concurred with the prayer by counsel for the respondent for proceedings to be nullified and order trial *de novo* before another arbitrator.

There is no dispute, as correctly submitted by the parties that the CMA record does not show whether exhibits were admitted and admitted as evidence but are only mentioned and referred to in the award. This is a fatal irregularity because since the record does not show that exhibits were admitted to form part of evidence, the court cannot rely on them in this application. There is a plethora of authorities that exhibits must firstly; be admitted, and secondly; be properly marked to form part of the record. A physical object that was not admitted and marked cannot form part of the record and cannot be acted by the court as it was held in the case of [Mhubiri Rogega Mong'ateko vs MAK Medics Ltd](#), Civil Appeal No. 106 OF 2019 [2022] TZCA 452, [M/S Sdv Transami T. Ltd vs M/S Ste Datco](#), Civil Appeal No. 16 of 2011) [2019] TZCA 180, *Robinson Mwanjisi and 3 Others v. Republic* [2003] TLR 218, [Chantal Tito Mziray & Another vs Ritha John Makala & Another](#), Civil Appeal No. 59 of 2018 [2020] TZCA 1930 to mention but a few.

The legal issue raised by the respondent disposes the whole application. I will therefore not consider grounds raised by the applicant.

For the foregoing, arbitrator's failure to admit and endorse the evidence of the parties and went on considering the unadmitted

documents in determining the dispute, amounts to a material procedural irregularity. I therefore agree with submissions of the parties and nullify CMA Proceedings and order that parties should go back to CMA so that the dispute can be heard *de novo* before a different arbitrator.

Dated in Dar es Salaam on this 14th September 2022.



B. E. K. Mganga
JUDGE

Judgment delivered on this 14th September 2022 in chambers in the presence of Lilian Benedems, applicant and Bugeza Mutalemwa, Advocate for the respondent.



B. E. K. Mganga
JUDGE