

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

**REVISION APPLICATION NO. 22 OF 2023**

*(Arising from an Award issued on 19/12/2022 by Hon. Johnson Faraja L, Arbitrator in Labour dispute No. CMA/DSM/ILA/255/21/91/21 at Ilala)*

**KARUME K. ABEID .....** **APPLICANT**

**VERSUS**

**GULLED INVESTMENT LIMITED .....** **RESPONDENT**

**JUDGMENT**

*Date of last Order: 09/03/2023*  
*Date of Judgment: 31/3/2023*

**B. E. K. Mganga, J.**

The facts of this application briefly are that, on 17<sup>th</sup> November 2020, Karume Kassim Abeid, the applicant, signed two years fixed contract with Abdullahi Nuru Gulled, the director of Gulled Investment Limited, the respondent. In the said fixed term contract of employment, the parties agreed that the contract of employment will commence on 1<sup>st</sup> December 2020 and will expire on 30<sup>th</sup> November 2022. It was further agreed that applicant was employed as production Manager with monthly salary of TZS

1,500,000/=. Applicant continued to receive TZS 1,500,000/= as monthly salary but from April 2021 to June 2021, he received less amount as his monthly salary. Applicant was unhappy with reduction of his salary, as a result, he complained before the Labour Officer at Temeke. On 9<sup>th</sup> July 2021, respondent terminated employment of the applicant, allegedly, that applicant was absent from work for more than five days without permission.

Aggrieved with termination of his employment, applicant filed Labour dispute No. CMA/DSM/ILA/255/21/91/21 before the Commission for Mediation and Arbitration (CMA) at Ilala for breach of contract. In the Referral Form(CMA F1) applicant claimed to be paid TZS 28,500,000/=.

It happened that respondent did not call her witnesses even after several adjournments, as a result, on 31<sup>st</sup> October 2022, Hon. Johnson Faraja L, Arbitrator, rejected the prayer of the respondent for further adjournment and ordered the applicant to be heard ex-parte.

Having heard evidence of the applicant, on 19<sup>th</sup> December 2022, the arbitrator issued an award that there was valid reason for termination because applicant was absent from work for more than five days without permission. The arbitrator found that respondent did not adhere to fair

procedures of termination hence termination was unfair procedurally. Based on those findings, the arbitrator awarded applicant to be paid TZS 1,500,000/= being one month salary as compensation.

Applicant was aggrieved with the said award hence this application for revision. In the affidavit in support of the Notice of Application, applicant raised two issues namely:-

- 1. whether respondent had valid reasons for termination of employment of the applicant.*
- 2. whether applicant was entitled to be paid TZS 1,500,000/= being one month salary.*

In opposing the application, respondent filed the Notice of Opposition and the Counter Affidavit of Mohamed A. Nuru, her principal officer.

When the application was called on for hearing, applicant was represented by Mr. Ambrose Menance Nkwera, learned Advocate while respondent was represented by Mr. Willington Theobard Rwabinyasi, learned Advocate.

Arguing the 1<sup>st</sup> issue in support of the application, Mr. Nkwera, learned counsel for the applicant, submitted that there was no valid reason for termination and that, the arbitrator erred to hold that applicant absconded for more than five days. Counsel for the applicant submitted that, on 01<sup>st</sup> July 2021 and 2<sup>nd</sup> July 2021, applicant was in Office. He added

that, on 3<sup>rd</sup> July 2021 and 4<sup>th</sup> July 2021, it was Saturday and Sunday hence not working days. He went on that, on 05<sup>th</sup> July 2021, applicant did not go at work because he lost his close relative and got permission from the respondent as evidenced by exhibit P4. Counsel for the applicant submitted further that, on 06<sup>th</sup> July 2021 and 08<sup>th</sup> July 2021, applicant and Abdallah Nuru Gulled, the Director of the respondent, were at Temeke Labour Offices in compliance with the summons from the Labour Officer relating to deductions of salary of the applicant. Counsel for the applicant submitted further that, 7<sup>th</sup> July 2021 was a public holiday, hence not a working day. He went on that, on 08<sup>th</sup> July 2021, respondent paid applicant salary deductions. Mr. Nkwera submitted further that, on 09<sup>th</sup> July 2021, applicant was served with termination letter showing that he was terminated with effect from 08<sup>th</sup> July 2021 due to absenteeism.

Arguing the 2<sup>nd</sup> issue, counsel for the applicant submitted that, the arbitrator erred to award applicant to be paid only one month salary. He submitted that the two-years fixed term contract was expiring on 30<sup>th</sup> November 2022 but it was terminated on 08<sup>th</sup> July 2021 while 18 months were remaining. Counsel submitted that, applicant was entitled to be paid TZS 27,000,000/= as salary for the remaining 18 months of the said fixed

term contract and TZS 1,500,000/= as notice all amounting to TZS 28,500,000/=. Counsel for the applicant cited the case of ***Shekilango Services Station Total v. Ombeni Mushi***, Revision No. 124 of 2020, HC (unreported) and ***Costantine Victor John v. Muhimbili National Hospital***, Civil Application No. 188/01 of 2021 CAT (unreported) to the position that if an employee with fixed term contract is unfairly terminated, he is entitled to be paid the remaining period of the contract.

Resisting the application, Mr. Rwabinyasi, learned counsel for the respondent, submitted that termination of the applicant was due to absenteeism from 01<sup>st</sup> July 2021 to 08<sup>th</sup> July 2021. Counsel submitted that in his evidence, applicant (PW1) did not prove that he was in Office for the days it was alleged that he was absent. He added that, there is no proof that applicant sought and was granted permission by the respondent. Counsel went on that; applicant was also working on Saturday but on 03<sup>rd</sup> July 2021 he was not in Office. Counsel for the respondent submitted further that, it is true that on 06<sup>th</sup> July 2021 and 8<sup>th</sup> July 2021, applicant and the employer were at Labour Officer's Office but was quick to submit that applicant did not seek permission and did not attend at work. Mr. Rwabinyasi maintained that applicant was terminated for absenteeism from

01<sup>st</sup> July 2021 to 08<sup>th</sup> July 2021 as evidenced by termination letter (exhibit P2) and concluded that there was valid reason for termination.

In his submissions, counsel for the respondent conceded that on 06<sup>th</sup> July 2021 and 08<sup>th</sup> July 2021, applicant and respondent were summoned before the Labour Officer due to complaint by the applicant relating to deduction of his salary. Counsel submitted that; the said deduction was for three (3) months. He submitted further that, on 09<sup>th</sup> July 2021 applicant was paid the said deductions and on the same date, he was served with termination letter.

On the award of TZS 1,500,000/= being one month salary, Mr. Rwabinyasi, learned counsel for the respondent submitted that, the arbitrator found that procedures were not adhered to, which is why, applicant was awarded the said amount so that applicant should not benefit from his misconducts. Counsel for the respondent submitted that, it was correct for the arbitrator to award applicant one month salary and cited the case of ***Felician Rutwaza V. World Vision Tanzania***, Civil Appeal No. 213 of 2019 CAT (unreported). Counsel for the respondent concluded his submissions praying that the application be dismissed for want of merit.

In rejoinder, Mr. Nkwera, learned counsel for the applicant submitted that, upon finding that procedures were not adhered to, the arbitrator was supposed to award applicant the remaining period of the contract. He submitted further that ***Rutwaza's case*** (supra) cannot apply to this application.

I have examined evidence in the CMA record and considered submissions made on behalf of the parties and find that, it is undisputed that, the parties had two years fixed term contract expected to expire on 30<sup>th</sup> November 2022. It is also undisputed that, on 9<sup>th</sup> July 2021, applicant was served with termination letter dated 8<sup>th</sup> July 2021 for absenteeism from 1<sup>st</sup> July 2021 to 8<sup>th</sup> July 2021. As pointed hereinabove, the arbitrator refused the prayer by the respondent for further adjournment after respondent's failure to call her witnesses despite several adjournments. Therefore, the only evidence that is available in the CMA record is that of the applicant.

In his evidence, Karume Kassim Abeid(PW1), the applicant testified that, on 1<sup>st</sup> July 2021 he was in office and that, when he went to collect his salary from bank, he found that respondent deposited only TZS 800,000/= instead of TZS 1,500,000/= that is his monthly salary. He testified further

that, on 2<sup>nd</sup> July 2021 respondent told him that he should complain wherever he wants, but he will not succeed to be paid. PW1 testified further that, he reported the incidence of deduction of his salary to the Labour officer, as a result, on 2<sup>nd</sup> July 2021, the Labour Officer, summoned the respondent to appear before him on 6<sup>th</sup> July 2021. I should point out that, that evidence is supported by the summons (exhibit P4) that was issued by Balole Nkwilima, the Labour Officer in-charge at Temeke. PW1 testified further that, on 6<sup>th</sup> July 2021, himself and the Director of the respondent reported to Labour Officer and that the Director of the respondent agreed to pay deductions made from his salary. In his evidence, PW1 also testified that, on 7<sup>th</sup> July 2021 it was a public holiday hence he did not go at work. He testified further that, on 8<sup>th</sup> July 2021, himself and Abdallah Nuru Gulled, the director of the respondent, went again to the Labour Officer but they were directed to go back on 9<sup>th</sup> July 2021. PW1 further testified that, on 9<sup>th</sup> July 2021 himself and the director of the respondent who was accompanied with his accountant one Monica, went again to Labour Officer. It is evidence of the applicant that, on 9<sup>th</sup> July 2021, respondent paid him TZS 1,490,000/= as salary arrears as evidenced by P3. I have examined exhibit P3 titled "**HATI YA MALIPO**" and find that



it was signed on 9<sup>th</sup> July 2021 by Monica Paul, the accountant of the respondent, Karume Kassim, the applicant and Balole Nkwilima, the Labour Officer. PW1 testified further that, on the same date, he was served with termination letter, allegedly, that he was absent from work for more than five days from 1<sup>st</sup> July to 8<sup>th</sup> July 2021.

It is my view that, there was no reason for termination of employment of the applicant. It is clear in my mind that, respondent terminated employment of the applicant simply because applicant exercised his right by demanding to be paid his full salary after illegal deduction that was done by the respondent. It is my further view that, the findings by the arbitrator that respondent had valid reason to terminate employment of the applicant is not supported by evidence on record. I am of that view because, there is no evidence that was adduced to contradict what was testified by the applicant. Exhibits P3 and P4 clearly corroborated oral testimony of the applicant.

It was submitted by counsel for the respondent that applicant was working also on Saturday and that, on 03<sup>rd</sup> July 2021, applicant was not in Office. With due respect to counsel for the respondent, there is no evidence adduced by the respondent to support that submission because

respondent did not adduce evidence. This court cannot take submissions from the bar as evidence. In fact, there is a litany of case laws both by this Court and the Court of Appeal that, submissions are not evidence. see the case of [Bruno Wenceslaus Nyalifa vs Permanent Secretary Ministry of Home Affairs & Another](#) (Civil Appeal 82 of 2017) [2018] TZCA 297, ***Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others***, Civil Appeal No. 147 of 2006, [Benjamin Watson. Mwaijibe vs. Ellen & Ethan Consult](#) (Rev. Appl 70 of 2022) [2022] TZHCLD 673 and [Ernest Ngiremisho t/a Tumaini College vs Boniface Philip Kimboka t/a Eureka Training Institute](#) (Misc. Civil Application 30 of 2022) [2022] TZHC 13181 to mention but a few. In the ***Bunju Village case*** (supra) it was held:-

*" . . . submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence."*

Even if it can be assumed that applicant did not attend at work on 7<sup>th</sup> July 2021 and 03<sup>rd</sup> July 2021, I take judicial note that, the said days were public holiday and weekend respectively. Therefore, those days should be taken out from the days applicant is alleged to have not attended at work.

See the case of [Costantine Victor John vs Muhimbili National Hospital](#) (Civil Application 188 of 2021) [2022] TZCA 646 and [Philip Tilya vs Vedastine Bwoji](#) (Civil Application 546 of 2017) [2021] TZCA 327.

Again, in my view, submission that applicant attended before the Labour Officer and that had no permission for not attending at work is illogical considering the reason that led applicant and the respondent to attend before the Labour Officer. Respondent knew where applicant was on the material dates and purpose thereof. In fact, that argument, cements my conclusion that applicant was terminated because he complained to the Labour officer. In my view, that cannot be a valid reason for termination. In short, respondent had no valid reason to terminate employment of the applicant.

It was submitted on behalf of the respondent that the arbitrator was justified to award applicant to be paid TZS 1,500,000/= being one month salary because termination was only procedurally unfair. I have held hereinabove that termination was substantively unfair and that there is no evidence that fair procedures were adhered to. Therefore, ***Rutwaza's case*** (supra) relied upon by counsel for the respondent cannot apply in the circumstances of this application. I therefore agree with submissions by

counsel for the applicant that, when termination is unfair substantively, the employee with a fixed term contract of employment is entitled to be paid the remaining period of the fixed term contract.

For the foregoing, I allow the application, quash, and set aside the CMA award and order the respondent to pay applicant a total of TZS 27,000,000/= being salary compensation for 18 months remaining period of the contract.

Dated at Dar es Salaam on this 31<sup>st</sup> March 2023.



B. E. K. Mganga  
**JUDGE**

Judgment delivered on this 31<sup>st</sup> March 2023 in chambers in the presence of Ambrose Menace Nkwera, Advocate for the Applicant and Willington Theobard Rwabinyasi, Advocate for the respondent.



B. E. K. Mganga  
**JUDGE**