

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

**REVISION APPLICATION NO. 439 OF 2022**

*(Arising from an Award issued on 10/11/2022 by Hon. Ng'washi, Y, Arbitrator in Labour dispute No.  
CMA/DSM/UBG/R.54/18/32 at Ubungo)*

**SABBASI MUSHI ..... APPLICANT**

**VERSUS**

**AGAPITHI KOBELO T/A LONDON PUB ..... RESPONDENT**

**JUDGMENT**

*Date of last Order: 21/03/2023  
Date of Judgment: 31/3/2021*

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

Facts of this application are that, on 1<sup>st</sup> January 2017, applicant and the respondent entered into employment relationship. It happened that their relationship did not go well, as a result, applicant filed Labour dispute No. CMA/DSM/UBG/R.54/18/32 before the Commission for Mediation and Arbitration (CMA) at Ubungo claiming to be paid TZS 3,215,000/= being compensation for unfair termination, one month salary in lieu of notice and severance pay.

On 10<sup>th</sup> November 2022, Hon. Ng'washi, Y, Arbitrator, having heard evidence of the parties, issued an award that applicant was a probationer hence not entitled to file the dispute for unfair termination. The arbitrator, therefore, dismissed the dispute filed by the applicant.

Aggrieved with the award, applicant filed this application for revision. In his affidavit in support of the application, applicant raised two grounds namely:-

- 1. That the arbitrator erred in law and fact for failure to analyze evidence adduced by the parties.*
- 2. That the arbitrator erred to hold that applicant was a probationer hence not entitled to file the dispute for termination.*

In resisting the application, Agapithi Kobelo filed both the Notice of Opposition and the counter affidavit.

When the application was called on for hearing, Mr. Anthon Kombe personal representative appeared and argued for and on behalf of the applicant while Ms. Magreth Kissoka, learned Advocate appeared and argued for and on behalf of the respondent.

Arguing in support of the 1<sup>st</sup> ground, Mr. Kombe submitted that applicant (PW1) testified that, on 01<sup>st</sup> January 2017, he entered into a six-month fixed term contract of employment with the respondent and that the said contract had three months' probation period. Mr. Kombe submitted

that; the said contract expired on 30<sup>th</sup> June 2017. Mr. Kombe submitted further that, after expiry of the said contract, no new contract was signed by the parties on ground that applicant performed poorly but continued to work until when his employment was terminated on 19<sup>th</sup> January 2018. He went on that; the said contract was renewed automatically. He further submitted that, the 2<sup>nd</sup> contract was renewed automatically and expired on 31<sup>st</sup> December 2017 and that the 3<sup>rd</sup> contract was renewed automatically from 01<sup>st</sup> January 2018 and was expected to expire on 30<sup>th</sup> June 2018 but was terminated on 19<sup>th</sup> January 2018. Mr. Kombe submitted that applicant indicated in the CMA F1 that he was unfairly terminated. He added that, from 01<sup>st</sup> January 2018 the date the 3<sup>rd</sup> contract was renewed automatically to the date of termination i.e., 19<sup>th</sup> January 2018, applicant had worked only for 19 days. In his submissions, Mr. Kombe conceded that applicant was not entitled to file the dispute relating to unfair termination.

On the 2<sup>nd</sup> ground, Mr. Kombe, personal representative of the applicant submitted that, the arbitrator erred to hold that applicant was a probationer and that cannot file the dispute for unfair termination. Mr. Kombe submitted further that, from 01<sup>st</sup> January 2017, the date the parties entered into contract of employment, to the date of termination, namely,

on 19<sup>th</sup> January 2018 applicant worked for more than one year. He submitted further that; probation period is not supposed to be more than one year. He concluded his submission praying that the application be allowed.

Resisting the application, Ms. Kissoka, learned counsel for the respondent, submitted generally that, applicant was a probationer. She submitted further that, on 01<sup>st</sup> January 2017, applicant entered into six months' fixed term contract of employment(exhibit S1) but his employment was terminated on his own will on 30<sup>th</sup> June 2017 after expiry of the employment contract. She concurred with submissions made on behalf of the applicant that, the 2<sup>nd</sup> contract was renewed by default from 01<sup>st</sup> July 2017 and expired on 31<sup>st</sup> December 2017. She added that, the 3<sup>rd</sup> contract was renewed by default from 01<sup>st</sup> January 2018 and was expected to expire on 30<sup>th</sup> June 2018 but was terminated on 19<sup>th</sup> January 2018. She concluded that, applicant worked only for 19 days in the 3<sup>rd</sup> contract that was renewed automatically. Counsel for the respondent cited the provisions of Section 35 of the Employment and Labour Relations Act[ Cap. 366 R.E. 2019] to support her submissions that an employee who worked for less than six months' cannot file the dispute relating to unfair

termination. She further cited the case of **David Nzaligo v. National Microfinance Bank PLC**, Civil Appeal No. 61 of 2016 CAT (unreported), **Shanta Mining Co. Ltd v. Herman Sembua**, Revision No. 1 of 2021, HC (unreported) and **Ngeleki Malimi Ngeleki v. Dimension Data Tanzania Ltd**, Revision No. 890 of 2019, HC (unreported) to support her submissions that a probationer cannot file the dispute relating to unfair termination. Counsel for the respondent concluded her submissions by praying that the application be dismissed.

In rejoinder submissions, Mr. Kombe simply submitted that respondent does not dispute that applicant's employment was terminated on 19<sup>th</sup> January 2018.

I have examined the CMA record and find that in the Referral Form(CMA F1) applicant indicated that the nature of the dispute was termination of employment. In the said CMA F1, applicant indicated further that he was claiming to be paid TZS 3,215,000/= being compensation for unfair termination, one month salary in lieu of notice, severance and overtime. In part B of CMA F1, applicant indicated that the dispute arose on 19<sup>th</sup> January 2018 and on fairness of procedure he indicated that he was not served with notice of termination and was not afforded right to be

heard. On fairness of reason, he indicated that the employer did not disclose the misconduct he was charged with.

In his evidence in chief, Agapith Kobelo(DW1), the only witness for the respondent, testified that applicant had six-month contract with three months' probation. In his evidence , DW1 also testified that the said six months' fixed term contract expired on 30<sup>th</sup> June 2017 and that no new contract was signed because during probation period, applicant did not perform well. While testifying under cross examination, DW1 denied having terminated employment of the applicant on 19<sup>th</sup> January 2018.

On the other hand, Sabbas Aloyce Mushi(PW1), the applicant, testified while in chief that, his employment commenced on 1<sup>st</sup> January 2017 after signing a contract of employment(exhibit S1) and that, on 26<sup>th</sup> May 2017, he was issued with a Certificate of employee of the year(exhibit S2) but respondent terminated his employment on 19<sup>th</sup> January 2018.

I have examined the contract of employment between the parties (exhibit S1) and find that the parties entered into a fixed term contract of six months' from 1<sup>st</sup> January 2017. As correctly submitted on behalf of the parties, apart from exhibit S1, there is no other contract that was signed by the parties. I am of the opinion that, the said contract was renewed

automatically and that the 2<sup>nd</sup> contract expired on 31<sup>st</sup> December 2017. The 3<sup>rd</sup> contract was renewed automatically on 1<sup>st</sup> January 2018 but it was terminated on 19<sup>th</sup> January 2018. In short, at the time of termination, applicant had worked only for 19 days in the 3<sup>rd</sup> contract.

It was correctly submitted by counsel for the respondent and correctly conceded by the personal representative of the applicant that, in terms of section 35 of the Employment and Labour Relations Act[Cap. 366 R.E. 2019], applicant was not supposed to file the dispute for unfair termination, because he worked for less than six months' in the 3<sup>rd</sup> contract. A similar position was held by the Court of Appeal in the case of *David Nzaligo vs National Microfinance Bank Plc*, Civil Appeal No. 61 of 2016) [2019] TZCA 540, *Serenity on the Lake Ltd vs Dorcas Martin Nyanda* (Civil Appeal 33 of 2018) [2019] TZCA 64, *ST. Joseph Kolping Secondary School vs Alvera Kashushura* (Civil Appeal 377 of 2021) [2022] TZCA 445. Since applicant worked only for 19 days in the 3<sup>rd</sup> contract that commenced on 1<sup>st</sup> January 2018, it was not proper for him to file the dispute relating to fairness of termination. I, therefore, uphold the award based on the provisions of section 35 of Cap. 366 R.E. 2019(supra) because applicant worked for less than six months.

It was held by the arbitrator that applicant was a probationer , which is why, the award was in favour of the respondent. With due respect, there is no proof that applicant was a probationer at the time of termination. Nothing was stated by DW1 in his evidence that after expiry of the three months' period, probation period was extended. I therefore hold that; applicant was not a probationer. In short, in holding that applicant was a probationer, the arbitrator did not properly evaluate evidence adduced by the parties.

For the foregoing, I hereby dismiss this application for lack of merit.

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 Anthony Kombe, Personal Representative of the Applicant and Elisha Kiula and Miriam Moses, Advocates, for the respondent.



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