

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

**REVISION APPLICATION NO. 50 OF 2023**

*(Arising from an Award issued on 30<sup>th</sup> January 2023 by Hon. Lucia Chrisantus Chacha, Arbitrator, in  
Labour dispute No. CMA/DSM/ILA/692/19/2022 at Ilala)*

**MURIDU ABDULLAH & 2 OTHERS.....APPLICANTS**

**VERSUS**

**ABDULLAH S. HASSAH & BROS LTD.....RESPONDENT**

**JUDGMENT**

*Date of last Order: 20/04/2023  
Date of Judgment: 8/5/2023*

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

Facts of this application briefly are that, on 11<sup>th</sup> September 2019, Muridu Mshamu Abdullah, Abdallah Bofu Alfani and Rashid Abdallah Kijujuba, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants respectively, filed labour dispute No. CMA/DSM/ILA/692/19/2022 before the Commission for Mediation and Arbitration(CMA) at Ilala complaining that Abdullah S. Hassan & Bros Ltd, the respondent, terminated their employment unfairly. In the Referral Form(CMA F1) that was signed by Muridu Mshamu Abdullah, the 1<sup>st</sup> applicant on behalf of all applicants, it was indicated that respondent

terminated their employment on 29<sup>th</sup> August 2019 without valid reason and also without complying with procedures provided for under Labour Laws. In the said CMA F1, applicants indicated that Muridu Mshamu Abdullah, the 1<sup>st</sup> applicant was claiming to be paid (i) TZS 300,000/= being payment in lieu of notice, (ii) TZS 300,000/= being leave pay for the year 2019, (iii) TZS 888,462/= being severance pay for 11 years, (iv) TZS 3,600,000/= being 12 months' salaries compensation for unfair termination and TZS 18,000,000/= being general damages all amounting to TZS 23,088,462. They also indicated that Abdallah Bofu Alfani, the 2<sup>nd</sup> applicant, was claiming to be paid (i) TZS 300,000/= as payment in lieu of notice, (ii) TZS 300,000/= being leave pay for the year 2019, (iii) TZS 403,846/= being severance pay for 5 years, (iv) TZS 3,600,000/= being 12 months' salaries compensation for unfair termination and (v) TZS 18,000,000/= being general damages all amounting to TZS 22,603,846/=. They further indicated that Rashid Abdallah Kijujuba, the 3<sup>rd</sup> applicant, was claiming to be paid (i) TZS 300,000/= being payment in lieu of notice, (ii) TZS 300,000/= being leave pay for the year 2019, (iii) TZS 646,154/= being severance pay for 8 years, (iv) TZS 3,600,000/= being 12 months' compensation for unfair termination and (v) TZS 18,000,000/= being

general damages all amounting to TZS 22,846,154/=. In total, applicants were claiming to be paid TZS 68,538,462/=. In addition to the foregoing, applicants prayed to be issued with a certificate of service.

On 30<sup>th</sup> January 2023, Hon. Lucia Chrisantus Chacha, Arbitrator, issued an award dismissing the dispute filed by the applicants on ground that there was no termination of employment, rather, applicants left their place of work without being terminated.

Applicants were aggrieved with the said award hence this application for revision. In their joint affidavit in support of the Notice of Application, applicants raised three grounds namely:-

- 1. That the arbitrator erred in law in holding that there was no termination of employment.*
- 2. That, the arbitrator was biased in evaluating evidence adduced by the applicants in holding that applicants were paid salaries.*
- 3. That the arbitrator erred in law and facts in holding that applicants terminated their employment.*

Respondent filed both the Notice of Opposition and the counter affidavit affirmed by Hajj Mohamed Hassan, her principal officer.

When the application was called on for hearing, Mr. Sospeter Ng'wandu, Personal representative, appeared and argued for and on behalf of the applicants while Mr. Hassan Zungiza, learned Advocate, appeared, and argued for and on behalf of the respondent.

Arguing in support of the application, Mr. Ng'wandu, personal representative of the applicants submitted that, the 1<sup>st</sup> applicant was employed on 22<sup>nd</sup> November 2008 for unspecified contract at monthly salary of TZS. 300,000/= . He went on that on 1<sup>st</sup> January 2012, respondent employed the 2<sup>nd</sup> applicant as watchman at monthly salary of TZS. 300,000/= and that employment of the 3<sup>rd</sup> applicant commenced on 10<sup>th</sup> December 2014 at monthly salary of TZS. 300,000/= . He added that, all applicants were employed for unspecified contracts and that their employment contracts were entered orally. Mr. Ng'wandu submitted further that, on 3<sup>rd</sup> October 2018, respondent was arrested for conducting illegal business and that respondent terminated employment of the applicants on 29<sup>th</sup> August 2019.

Submitting in support of the 1<sup>st</sup> ground, Mr. Ng'wandu argued that evidence of Muridu Abdullah (PW1) and Kijujuba (PW2) proved that Respondent terminated employment of the applicants orally. He submitted further that; applicants worked for more than three years hence they are entitled to be paid severance. On the 2<sup>nd</sup> ground, Mr. Ng'wandu submitted that, respondent failed to tender evidence (exhibits) showing that she was paying salary to the applicants. On the 3<sup>rd</sup> ground, the personal

representative of the applicants submitted that no employee could have abandoned employment and stay at home without receiving payments. Briefly as he was, the personal representative of the applicants prayed that the application be allowed.

Arguing against the 1<sup>st</sup> ground of the application, Mr. Zungiza, learned counsel for the respondent, submitted that applicants did not adduce evidence to show the dates of commencement of their employment. He added that, applicants did not prove that they were terminated. He went on that, evidence of Muridu(PW1) proved that respondent did not terminate employment of the applicants, rather, applicants terminated their employment.

Arguing the 2<sup>nd</sup> ground, counsel for the respondent submitted that, CMA proceedings doesn't show that applicants were not paid salary and that there is no evidence showing the months during which they were not paid. Counsel added that, applicants filed the dispute claiming that they were unfairly terminated and that their claim was not salary arrears.

On the 3<sup>rd</sup> ground, counsel for the respondent submitted that, applicants did not attend at work for more than 3 months. Counsel

concluded his submissions by praying that the application be dismissed for want of merit.

In rejoinder, Mr. Ng'wandu, the personal representative of the applicants submitted that respondent did not prove as to when she last paid the applicants prior to the alleged abscondments. He added that, respondent did not prove that there was no termination.

I have examined evidence in the CMA record and considered submissions made on behalf of the parties in this application and find, in my view, that the main issue to be answered in this application is whether applicants were terminated or not. The sub issue arising from the said main issue is, what relief are the parties entitled to.

The CMA record shows that only two witnesses namely Hajji Mohamed Hassan(DW1) and Muridu Mshamu Abdullah (PW1) testified for the respondent and applicants respectively. Therefore, submission by Mr. Ng'wandu that Rashid Kijujuba, the 2<sup>nd</sup> applicant testified at CMA is not supported by the evidence in the CMA record. I will, therefore, decide this application based on evidence adduced by the two witnesses during hearing at CMA.

In his evidence, Muridu Mshamu Abdullah(PW1) the 1<sup>st</sup> applicant stated that applicants were employed by the respondent for unspecified contracts but that respondent failed to pay them salaries. He testified further that, initially they filed a dispute that was heard ex-parte and that they were awarded but the award was set aside by the court. He stated further that, they were never paid by the respondent for 11 years they have worked. In his evidence, PW1 stated that they were also claiming to be paid severance pay and NSSF. He concluded by praying the arbitrator to award them what was awarded in the ex-parte award.

On the other hand, Hajji Mohamed Hassan(DW1) testified that, applicants were employed by the respondent and that he used to pay them salary. He testified further that, on 3<sup>rd</sup> October 2018, his jewelry shop was closed by the government but it was opened in April 2019. DW1 also testified that, at all times when his shop was closed, applicants were paid salary. It was evidence of DW1 that, in June 2019 applicants stopped to attend at work. He testified further that, he did not terminate the applicants and that only in September 2019, applicants filed the dispute at CMA.

In his evidence while under cross examination, DW1 stated that, the government closed his jewelry shop because he had no licence. He maintained that he did not terminate the applicants because they left in June 2019 and that, it is not true that they left because they were not paid salary.

I should point out, in his evidence, PW1 did not state as to when each applicant was employed and the terms of employment or whether the contracts were orally or in writing. PW1 did also not state the amount each was paid as monthly salary. The dates of employment and monthly salary that each was being paid when they were working with the respondent were merely indicated in the sheet that was attached to the CMA F1 as part of the said CMA F1. Therefore, submissions by Mr. Ng'wandu relating to date of employment, monthly salary, and position of each applicant, is not supported by evidence. I, therefore, agree with submissions by counsel for the respondent that, dates of employment of each applicant were not proved. It is my view that, applicants were duty bound to prove what they indicated in the CMA F1. Unfortunately, applicants thought that it was enough to indicate their claims in the CMA F1 and leave it to the arbitrator to decide without supporting evidence.



As pointed out hereinabove, in the CMA F1, applicants indicated that the dispute relates to unfair termination. In his evidence, Muridu Mshamu Abdullah(PW1), briefly as he was, did not testify that they were unfairly terminated by the respondent. In short, evidence of PW1 who testified on behalf of the applicants, was at variance with their pleadings. That evidence did not help the applicants to prove their claim that they were unfairly terminated because nothing was testified relating to unfair termination. More so, evidence of PW1 cannot help the applicants on allegation that they were not paid salary by the respondent because their claim in the CMA F1 was not relating to unpaid salaries. In short, evidence of the applicant was at variance with the pleadings and must be ignored. See the case of *Barclays Bank T. Ltd vs Jacob Muro* (Civil Appeal 357 of 2019) [2020] TZCA 1875-Tanzlii, *Registered Trustees of Islamic Propagation Center (IPC) vs The Registered Islamic Center (TIC) of Thaaqib Trustees* (Civil Appeal 2 of 2020) [2021] TZCA 342-Tanzlii .

It is my considered opinion that, the complaint by the personal representative of the applicants that, respondent did not tender exhibits to show that applicants were paid salary, cannot help the applicants because the nature of the dispute was unfair termination and not claim of unpaid

salaries. I also find that, submissions by Mr. Ng'wandu, the personal representative of the applicants in the 3<sup>rd</sup> ground, that no employee can abandon employment and stay at home with payment lacks merit because, the argument is not supported by evidence on record. Reason for that conclusion is that it is submissions from the bar, which, at any rate, cannot be regarded as evidence, rather, clarification to support evidence on record. In absence of evidence on record, however loaded the submission is, cannot be regarded as evidence. See the case of [\*Rosemary Stella Chambejairo vs David Kitundu Jairo\*](#) (Civil Reference 6 of 2018) [2021] TZCA 442-Tanzlii, [\*Bruno Wenceslaus Nyalifa vs Permanent Secretary Ministry of Home Affairs & Another\*](#) [2018] T.L.R. 58 [CA] (Civil Appeal 82 of 2017) [2018] TZCA 297-Tanzlii, [\*Sahara Media Group LTD Vs. Bidya John\*](#) (Misc. Labour Application 40 of 2022) [2022] TZHC 3206 Tanzlii, [\*Ernest Ngiremisho t/a Tumaini College vs Boniface Philip KImboka t/a Eureka Training Institute\*](#) (Misc. Civil Application 30 of 2022) [2022] TZHC 13181-Tanzlii and [\*Benjamin Watson. Mwaijibe vs. Ellen & Ethan Consult\*](#) (Rev. Appl 70 of 2022) [2022] TZHCLD 673-Tanzlii to mention but a few.

Before I pen down, I should comment in a passing that, PW1 was over joyous with what applicants were awarded in the ex-parte award in forgetfulness that the said ex-parte award was already set aside, which is why, he was praying the arbitrator to grant similar reliefs as they were granted in the ex-parte award. But, that fault, should go to the personal representative, who represented the applicants at CMA but failed to assist them to be focused on what was pleaded in the CMA F1. It is my view that, any advocate or personal representative entrusted to represent a party in a suit or dispute, should, as much as possible, devote time, energy and apply his professionalism to reflect the trust bestowed to him by the party to the suit or dispute. What was done in this application, I afraid, but I have to say, that PW1 gave evidence very casually and in few words while unguided by the personal representative who entered appearance on that date. I urge all persons appearing in court or quasi-judicial bodies on behalf of the parties, before making their appearance to represent the parties, to abreast themselves with the subject matter, in order to have meaningful representation that can deserve the trust bestowed by the parties.

Now back to the application at hand, since I have held hereinabove that evidence was at variance with pleadings in the CMA F1, or that there was no evidence to prove unfair termination, I hereby dismiss this application for want of merit.

Dated at Dar es Salaam on this 08<sup>th</sup> May 2023.



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

Judgment delivered on this 08<sup>th</sup> May 2023 in chambers in the presence of Sospeter Ng'wandu, Personal representative of the Applicants but in the absence of the Respondent.



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

