

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**REVISION APPLICATION NO. 74 OF 2020**

*(Original CMA/ARS/ARS/125/19/91/19)*

**ZEPHANIA JOHN KISANGA ..... APPLICANT**

**Versus**

**ARUSHA AGGREGATES LTD. .... RESPONDENT**

**JUDGMENT**

Hearing concluded...07//06/2021

Judgment delivered...26/07/2021

**GWAE, J**

The applicant, Zephania John Kisanga (employee) filed a labour dispute before Commission for Mediation and Arbitration of Arusha at Arusha against the respondent (employer). He sought to be compensated for unfair termination at the tune of Tshs, 3,600,000/=, payment of Tshs. 484,615/= being severance pay, one-month salary in the tune of Tshs. 300,000/= in lieu of statutory notice and issuance of certificate of service.

Controversial issues before the Commission were as follows; whether the respondent terminated the applicant's employment, if the 1<sup>st</sup> issue is answered in affirmative, whether the applicant was fairly terminated and extent of reliefs that

parties are entitled. Upon hearing both parties, the Commission concluded that the applicant was not terminated by his employer and therefore not entitled to remedies available for an employee who has been unfairly terminated as stipulated under section 40 (1) of the Employment and Labour Relations, Cap 336 Revised Edition, 2019 (ELRA) save issuance of certificate of service by virtue of section 44 (d) (e) of ELRA.

Aggrieved by the CMA decision, the applicant has preferred this application for revision on the grounds, that, the Commission erred in law and fact in holding that the applicant signed a new contract dated 2<sup>nd</sup> January 2019 and that he was not terminated by the respondent while the evidence reveals that he was terminated following the change of terms and conditions of the employment from permanent to specific period (one year).

The applicant's application was resisted by the respondent through his counter affidavit however the respondent's advocate one Musiba did not appear for two days consecutively fixed for hearing as result the application was heard ex parte. Mr. Herode Bilyamtwe represented the applicant in the capacity of personal representative of the applicant's own choice. Mr. Herode merely prayed pray for adoption of their affidavit. He however added that the applicant has resigned due to the act of the respondent changing terms and conditions of the contract contrary to section 15 (4) ELRA (From Permanent to Specific

employment). According to the applicant's representative, the Applicant was to be paid his terminal benefits as per former employment contract.

Evidently from the record of the Commission and testimony as well as the award, the applicant was served with another contract of employment on the 2<sup>nd</sup> January 2019 which was a fixed term that is one-year term of employment. Dissatisfied with the terms and conditions stipulated in the new contract, he conspicuously wrote a letter dated 1<sup>st</sup> February 2019 (PE2) to his employer requesting for payment of due pay or arrears before he entered in the new contract. It was the same date when he filled the Referral Form No. 1 which was duly admitted by the Commission on the 1<sup>st</sup> March 2019.


Examining the letter (PE2) written by the applicant and addressed to the respondent as well as applicant's letter dated 18<sup>th</sup> February 2019 (PE3) addressed to the employer, evidently produced by the applicant during hearing, I have come up with an observation that, the applicant was not plainly and expressly terminated by the respondent. As evidence on record is very clear that the applicant was challenging modes of change of terms of contract of employment from permanent to specific and if so, whether the respondent's acts constitute constructive termination or not. This issue was not framed and addressed by the Commission.

always guided by issues framed immediately before commencement of hearing, by doing so, the parties may be able to prove their cases or defend cases against them. In **Scan Tan Tours Ltd vs. the Registered Trustees of the Catholic Diocese of Mbulu**, Civil Appeal No.78 of 2012 (unreported), the Court of Appeal made an emphasis on the duty to decide on the issues on record and not otherwise. Through PE2 and PE3 the applicant's complaints were based on arrears as per previous contract and his unreadiness to sign the contract without being paid his dues. If the applicant was of the view that the respondent's acts of changing terms and conditions of his employment contract (job description) amounted to constructive termination, that issue would have been framed and be reflected in the record. I am sound of section 36 of the ELRA where an employer may make continued employment relation intolerable or where an employer may refuse to renew the fixed term.

In the final analysis, this application is entirely dismissed. However, for the interest of justice, time saving in particular, the applicant is given **fourteen (14)** days within which to file his dispute in the Commission in accordance with his complaints and thereafter completeness of parties' pleadings, issues for determination be properly framed.

It is so ordered



  
**M. R. GWAE,**  
**JUDGE**  
**26/07/2021**