

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

LABOUR REVISION NO. 74 OF 2019

(Arising from the Award of the Commission for Mediation and Arbitration at Mwanza in
CMA/MUS/259/2018/28/2019)

**FOUR SEASONS SAFARI LODGE SERENGETI..... APPLICANT
VERSUS
FAIDA HASSAN POTEA.....RESPONDENT
JUDGMENT**

14.4.2020 & 29.5.2020

U. E. Madeha, J

The applicant calls upon this court to examine and revise the proceedings and arbitration award made by the Commission for Mediation and Arbitration (herein CMA) at Mwanza in dispute No. CMA/MUS/259/2018/28/2019. The application is made under Sections 91 (1) (b) (b) (c) and 94 (1), (b) (i) of the Employment and the Labour Relation Act, read together with rules 24 (1) (2) (a), (b), (c) (d) (e) and Rule 28 (1) (a) (b) (c) (d) (e) of the Labour Courts Rules, 2007 (G.N No. 106 of 2007).

Briefly, the background of this dispute is that the Respondent, Faida Hasan Potea, was the employee of the Four Seasons Safari Lodge Serengeti. The respondent was employed by the applicant on 17.12.2012 as a security guard, he was supposed to ensure the safety of the applicant's properties

inside and outside the applicant compound, his employment was a permanent contract of services. The respondent was terminated on 18.12.2018 by the applicant for the reasons of misconduct (Sleeping in the job premises and the failure to perform job assigned by his employer). The respondent alleges that the termination was procedurally unfair. The applicant alleges that he adhered all procedures before affecting the termination. The award of the CMA was that the respondent to be reinstated as per section 40 (1) (a) of the Employment and the labour Relation Act and the order to be effective from the date of issuing an award, second the applicant must pay the respondent remuneration from the date of unfair termination which was 08.12.2018 to the date of the award which was on 12.7.2019. Payment of salaries for seven months, which is Tshs. 9,414,965.27. Being dissatisfied with the award of the CMA the applicant filed this revision on improper procurement of the award.

Mr. Renatus Lubango Shiduki, the applicant learned advocate submitted that, the CMA ordered the respondent to be paid a total of Tshs 9,414,756.89 being a salary for eleven months. According to the commission's findings no exhibits, this is erroneous, misleading, as the basic salary of the respondent's basic salary which was 500,000. The CMA found

that the basic salary was Tshs 1,344,965.27 there was no justification for the arbitral award. The award was improperly procured.

Mr. Innocent Bernad, the respondent learned advocate submitted that; the applicant failed to establish valid reasons justifying the termination of the respondent as the all facts did not support the allegations. As to the whole evidence, no misconduct committed in the course of employment. This position was already held in the case of **Tanzania Revenue Authority Versus Andrew Mpunda** Labour Revision No. 104. LCCD No. 1 Part 1 of 2015.

"It is the established principle that for the termination of employment to be considered fair, it should be based on a valid reason and fair procedures. In other words, there must be substantive fairness and the procedural fairness of terminating of employment, Section 37 (2) of ELRA the intention of the legislature is to terminate the employee only for a valid reason and not they will or whims."

The arbitrator has the discretion to award any of the remedies specified under section 40 (1) (a) (b) (c) of the Employment and the Labour Relation

Act, No. 6 of 2004. Since the arbitrator in this case found the termination was unfair, he legally awarded the remedy of reinstatement which he had discretion to award. Therefore, there is no basis to have the revised decision.

The issue here is that whether or not there are valid reasons for terminating the applicant employment, whether there was substantive fairness and procedural fairness of the applicant termination. It is put clear in law that before termination of employment, the employer has to examine the concept of unfair termination on the basis of the conduct capability. After seeing the CMA records, it appears that, the applicant was unfair to terminate the respondent without any substantive reasons. The applicant failed to prove that the respondent committed wrongly which led to his termination.

Coming to the issue of the improper procurement of the award. I have gone through the CMA records, I find that the respondent was being paid Tshs 500,000, CMA holds that the respondent was paid a salary of Tshs 1,344,965.27. I agree that there is improper procurement of the award. The applicant is required to be paid termination benefits from the salary he received while on working.

In the result, the applicant is ordered to reinstate the respondent and failure to do so, the applicant should comply with the requirement of section 40 (1) of the Employment and the Labour Relation Act, No. 6 of 2004. Hence, I hereby party dismisses the CMA calculations and order that the applicant to be paid based on his salary level.

DATED and **DELIVERED** at **MWANZA** this 29TH day of **MAY**, 2020.




U. E. MADEHA

JUDGE

29/5/2020