

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)**

AT ARUSHA

LABOUR REVISION APPLICATION NO. 53 OF 2021

(Originating from Employment Dispute No. CMA/ ARS/ARS /402/2020/189/2020)

HADIJA ALLY APPLICANT

Versus

THE LONDON BAZAAR RESPONDENT

JUDGMENT

Date of last order: 15 -2-2022

Date of judgment: 22-2-2021

B. K. PHILLIP, J

Before me is an application for revision in respect of the award made by the Commission for Mediation and Arbitration ("CMA") at Arusha, delivered on 24th May, 2021 in Employment Dispute No. CMA /ARS/ARS/402/2020/189/2020. The applicant prays for the following orders;

- i) That this Honourable Court be pleased to call for the record of the proceedings for Employment Dispute No. CMA /ARS/ARS/402/2020/189/2020, decided by the CMA at Arusha on 24th May 2021.
- ii) Costs of the application be provided for.

iii) Any other Relief(s) this Honourable Court may deem fit and just to grant.

The application is made under the provisions of sections 91 (1) (a) (b), (2) (c), (4) (a) (b), 94 (1) (b) (i) of the Employment and Labour Relations Act read together with Rules 24(1), (2) (a) (b) (c) (d) (e) (f), (3) (a) (b) (c) (d) and 28 (1) (a) (c) (d) and (e) of the Labour Court Rules, 2007 (G.N. No. 106 of 2007) supported by an affidavit sworn by the Applicant. The Applicant was represented by Faustine Mtui, her personal representative whereas the respondent was represented by Fredrick Musiba, learned Advocate who filed a notice of opposition and counter affidavit to oppose the application.

I ordered the application to be disposed of by way of written submissions. Both sides filed their submissions as ordered.

Before delving into the merits of this application, it is worth stating the background to this matter, albeit briefly. The applicant herein worked with the respondent from 1995 to 6th August 2020 when her employment came to an end. She was employed by the respondent as a house maid. The respondent claims that the applicant decided on her own will to resign from her employment by presenting a resignation letter (exhibit D1). On the other hand the applicant

strongly denied the allegations that she resigned from employment on her own will. She claimed that her employment was terminated by respondent unfairly. Hence, she lodged her complaints for unfair termination at the Commission for Mediation and Arbitration of Arusha at Arusha ("CMA"). Upon hearing the matter inter-parties the Arbitrator led in favour of respondent. Being aggrieved by the decision of the 1A the applicant lodged this application for revision before this Court on the following grounds:

- i) That the arbitrator erred in law and in fact for holding that the applicant resigned from employment.
- ii) That arbitrator erred in law and in fact by failure to properly assess and evaluate the evidence tendered before it, leading to wrong findings.
- iii) That, the arbitrator award has occasioned miscarriage of justice to the applicant.

Submitting on the 1st and 2nd grounds conjointly, the applicant's representative, Mr. Mtui argued as follows; That the applicant's employment was terminated by the respondent by forcing her to sign the resignation letter (exhibit D1).The applicant is educated woman. She knows how to read and write. She never asked the respondent to

strongly denied the allegations that she resigned from employment on her own will. She claimed that her employment was terminated by respondent unfairly. Hence, she lodged her complaints for unfair termination at the Commission for Mediation and Arbitration of Arusha at Arusha ("CMA"). Upon hearing the matter inter-parties the Arbitrator ruled in favour of respondent. Being aggrieved by the decision of the CMA the applicant lodged this application for revision before this Court on the following grounds:

- i) That the arbitrator erred in law and in fact for holding that the applicant resigned from employment.
- ii) That arbitrator erred in law and in fact by failure to properly assess and evaluate the evidence tendered before it, leading to wrong findings.
- iii) That, the arbitrator award has occasioned miscarriage of justice to the applicant.

Submitting on the 1st and 2nd grounds conjointly, the applicant's representative, Mr. Mtui argued as follows; That the applicant's employment was terminated by the respondent by forcing her to sign the resignation letter (exhibit D1).The applicant is educated woman. She knows how to read and write. She never asked the respondent to

help her to write a resignation letter as alleged by the respondent at the CMA, contended Mr. Mtui. He went on arguing that the respondent claims that he paid the applicant all her entitlements and tendered exhibit D2, but the respondent's allegations on the payment indicated in exhibit D2 were not substantiated.

Moreover Mtui contended that applicant's right to work has been terminated without any justification contrary to Rule 13 (1), (2), (3), (4) and (5) to 13 of G.N No. 42 of 2007 which provides that before terminating any employment contract the employer must give the employee right to be heard.

With regard to the third ground, Mr Mtui submitted that applicant was not paid all what she deserved. No documents were tendered to prove that the applicant was paid all of the severance pay and money for her leave .He contended that exhibit D2 which was tendered in evidence by the respondent was just showing the calculations for the amount which the applicant was supposed to be paid but nothing was paid and also proves that the applicant was paid severance pay for a period of one year only while she worked with the respondent for more than thirty Years instead of ten years as provided under the Employment and Labour Relations Act, ("ELRA)

In reply Mr. Musiba submitted that the applicant was employed by respondent from 1995 to 6/08/2020 when her contract came to an end after she had tendered resignation letter to her employer in which she stated that she wanted to resign from her employment due to family problem and requested to be paid her terminal benefits up to 31/07/2020. The learned counsel submitted further that at the hearing of this matter before the Arbitrator, the applicant was unable to convince the Commission that she was forced to sign the resignation letter. The Respondent paid the applicant all her entitlements including severance pay for ten years which in the eyes of the law he was not supposed to be pay as per section 24 (1) of ELRA. He contended that an employee who resigns from employment cannot sue for unfair termination. To bolster his argument he cited section 37 of ELRA. The learned Advocate invited this Court this to dismiss this application.

After going through affidavit, counter affidavit, submissions made by both the applicant's representative and the learned advocate for the respondent , proceedings and award made by CMA, in my opinion the issue for determination before this Court is whether the applicant's employment was terminated unfairly and to what reliefs are the parties entitled to.

Looking at the evidence adduced at the CMA, no evidence was adduced to prove that the applicant was terminated from her employment. I have noted that there are two competing averments. The applicant alleges that she did not write the resignation letter (Exhibit D1) and that the same was written by the respondent, and she was forced to sign it. On the other hand the respondent relies on exhibit D1 to prove that the respondent resigned from her employment voluntarily. It is a trite law that he who alleges has a burden of proof. (See section 110 of the Evidence Act). During the hearing at the CMA the applicant did not bring any evidence to prove that she was forced to sign the resignation letter (Exhibit D1).She has not given any convincing explanations showing that there is any possibility that she was forced to sign the resignation letter (Exhibit D1) which states clearly her intention to resign from employment and it was signed by her since she does not deny that she signed it. In my opinion the respondent discharged his burden of proof that the applicant was not unfairly terminated from employment. She voluntarily resigned from her employment. I am saying this because Exhibit D1 is self explanatory. Thus, under the circumstances, I agree with the counsel for the respondent that the evidence adduced proved that the applicant was not terminated from employment but she

resigned on her own will. Thus, the argument made by the applicant's representative that the applicant was not heard has no merit as the applicant opted to resign from her employment voluntarily. Under the circumstance there was no need to conduct disciplinary hearing. In the case of **Francis Kidanga Versus Kilimanjaro Fast Ferries Ltd, Revision No.668 of 2019**, (Unreported) my sister Lady Justice Muruke, J was confronted with an issue similar to the one in hand. She said the following ;

" The mode of which the applicant and the respondent ended employment contract (termination by agreement) is regulated by Rule 3(2) (a) of the Employment and Labour Relations (Code of Good Practice) Rules of 2007 and not guided by Rule 13(1) (2) and (3) of GN.No.42/2007 submitted by the applicant's advocate to this Court , applicant having signed Exhibit D7 he is bound by the principle of estoppels that stops one from denying his own previous deed once done by his own consent .Thus , the applicant is bound by termination agreement signed by both parties. As correctly decided by the arbitrator, this Court sees nothing worth interfering with the CMA decision same is upheld....."

Similarly, in this matter in the absence of any evidence or convincing explanations that the applicant was forced to sign the resignation letter (Exhibit D1), she is estopped from denying it. Under the circumstances,

the provisions of Rule 13 of GN.No.42/2007 are not applicable in this matter. Therefore, it follows that the claim for severance pay has no merit. In addition, the annexures to Exhibit D1 which were duly signed by the applicant show that the applicant was paid all her entitlements. Now, coming to the second issue on the reliefs the parties are entitled to, having made the above findings that the applicant resigned from employment on her own will, I do not see any plausible reason to interfere with the decision of the Arbitrator. In the upshot, the decision of the Arbitrator is upheld. This application is dismissed.

Dated this 22nd day of February 2022



A handwritten signature in black ink, appearing to read "B. K. Phillip", is written over a faint circular stamp.

B. K. PHILLIP

JUDGE