

TANZANIA / JUDGMENT

elite dental clinic ltd vs sabreena kamal jahar 2022 tzhcld 714 14 july 2022

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14 July 2022

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT PAR ES SALAAM REVISION NO. 419 OF 2021 ELITE DENTAL CLINIC LTD..... APPLICANT VERSUS SABREENA KAMAL JAHAR.....RESPONDENT (From the decision of the Commission for Mediation and Arbitration at Ijripndoni) (Wilbard: Arbitrator) dated 06th September, 2021 in . . 0 REF: CMA/DSM/KIN/871/i9/390

JUDGEMENT

16th May & 14th July 2022 0 ' "• RwizileJ This application emanates from the decision of the Commission for Mediation Wpd (CMA) in Labour Dispute No. CMZ^dsm/kin/87?1/19/390. This Court has been asked to call for the records of the GMZ^for the purpose of revising the proceedings and the award. In fact, it is alleged that the applicant was employed by the respondent. Their employment relationship became corrosive leading to termination of the employment in what the applicant considered as breach of contract. Upon termination, the respondent was not satisfied with termination, she filed a labour dispute. The CMA found termination breached the terms of the contract. He was awarded compensation for unexpired term of contract. The applicant was aggrieved, hence this application The application is supported by the applicant's affidavit affirmed by her principal officer. In opposition, the counter affidavit was .filed by the respondent. The applicant advanced 6 grounds for consideration but at the hearing, only one ground was maintained and argued.: -

- i. Whether It was proper for the arbitrator to grant 3 months remuneration without taking regard of the difference between basic salary and wages contrary to section 4 of the Employment and Labour Relations Act, without basing on the calculation and disregarding proof of payment voucher dated 14th September 2019. Making oral arguments in respect of the point, MS Victoria Mgonja learned 9" % ? counsel clearly|stated that section 4 of the ELRA defines wages to exclude allowances* overtime, or any monies payable for extra duty. It was her view, that exhibit E4 showed the basic salary of the respondent as 1,000,000.00TZS and other entitlements in terms of allowances brought the total 2,967,142.00TZS. According to her, clause 6 of the employment contract shows the respondent's remuneration be 2,873,960.00TZS which is subject of statutory deductions. It was the counsel's view that the respondent's total payment would have been the amount of not more than 3,000,000.00TZS.

Therefore, the learned counsel concluded, the arbitrator was wrong. Mr. Frank Martin who appeared for the respondent was with a different view. He submitted that the dispute before this court is on reliefs given to the respondent. He said, it means, the substance of the award has to remain as it was made by the CMA. He argued that since the respondent was terminated unfairly, and her contract had only three months to expire, the payment made was proper based on, salary. He argued further that, clause 6 of the employment contract made it clear that the salary of the applicant after basic deductions was the sum of 2,873,960.00 TZS. This court was therefore asked to dismiss the application. " Having heard the application and made perusal of the records. I have to state here that based on the submissions of the applicant, the central issue to determine is whether the amount of compensation given was lawful. The applicant pegged her application under the terms of section 4 of ELRA, where the term basic wages is defined as follow; "Basic wage" means that part of an employee's remuneration paid in respect of work done during the hours ordinarily worked but does not include -

- (a) allowances, whether or not based on the employee's basic wage;
- (b) pay for overtime worked in terms of section 19(5)fa
- (c) additional pay for work on a Sunday or a public holiday; or
- (d) additional pay for night work, as required under section 20(4);" Apparently, the applicant has made an argument that payment made to the respondent was made in total disregard of the deductions statutorily to be made to the employee. But terms of payment of salaries as a matter of evidence is shown in exhibit SI. This is a contract of employment. Clause 6 of the same, is in plain terms as hereunder; % y.. The employee's net salary will be in TZS 2,873,960/= (Tanzanian Shillings Two Million Eight Hundred Seventy-Three Thousand Nine Hundred sixty only) per month. This is after being subjected to statutory contributions- ie PAYE, social Fund Contributions i.e PPF (now PSSSF) but also the health insurance deductions i.e NHIF (3% of gross salary) From my understanding of the terms of the contract, the applicant was paying the amount stated in the contract after all statutory deductions. It means, the amount of salary paid is what is stated in the contract exhibit SI. The documents tendered in exhibit as E4 collectively did not aim at proving the amount of salary payable. I do not therefore see anything to fault the finding of the commission. It was correct in holding that the salary payable to the respondent was 2,873,960,00 TZS per month. Since there is no dispute as to breach of the same contract, I agree with the CMA, as well that, payment of three months' salary is what was the remaining period of the contract as a matter of law. This application therefore has no merit. It is dismissed, ^ this is a labour matter, I order no costs. A.K. Rwizile JUDGE 14.07.2022 5

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