

TANZANIA / JUDGMENT

homeland security service co ltd vs alex kasusura and another 2021 tzhcld 279 30 june 2021

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30 June 2021

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT DAR ES SALAAM MISCELLANEOUS
LABOUR APPLICATION NO. 524 OF 2020 BETWEEN HOMELAND SECURITY SERVICE CO.
LTD..... APPLICANT AND ALEX KASUSURA & ANOTHER..... RESPONDENTS

RULING

Date of Last Order: 25/06/2021 Date of Ruting: 30/06/2021 Z. A. Maruma, J. The ruling is resulting of an application for review of the decision in Revision Application No. 707 of 2019 between Homeland Security Services Co. Ltd. Versus Alex Kasusura and another, dated 30th October 2020 before Dr. Banzi, J. The application is brought ' - w 1 % . ***»■ under section 94(1) of the Employment and Labour Relation Act No.

6. Of 2004 with grounds merged here under that:-

1. The Honorable Court be pleased to review the decision of Revision Application No. 707 of 2019 and decide the way it thinks fit and appropriate. i
2. Hon. Judge erred in law and facts for failure to take into consideration that there was no contract of service between applicant and respondents.
3. Hon. Judge erred in law and facts for failure to take into consideration that the applicant denied his right of fair hearing by being not served with the Counter Affidavit and written submission by the respondent as per court order. The application is supported by an affidavit of Aurelian Ngonyani, the Managing Director of the applicant and contested by a counter affidavit of Francis Laulian Mlaba. The application was argued before this court by Mr. Hemed Omari Kimwaga for the applicant and Mr. Sammy Katerega for the respondent both under capacity of personal representative. Having adopted the affidavit supporting application, the representative for applicant submitted that, the decision of Banzi, J. was based on submissions which of the parties who agreed the hearing to be by way of written submission. But reading the decision it seems like parties were arguing before the Judge orally which in danger the applicant rights if he wishes to proceed with this matter before

another level. Therefore, prayed for this court to rectify errors 2 as to reflect the schedules of the dates ordered to submit written submissions. He argued this due to the fact that respondents did not submit a reply to written submission intentionally. Hence, led the decision of this court finalized without the completion of orders given for submission of written submissions. He argued a decision thereto has been unfair to the applicant as his right to be heard was detained

- .. ■ by the respondents. Therefore, he prayed for this court to set aside the decision of this court and prayers for review of Revision No. 707 of 2020 to be
- ■: granted. Arguing against the application, Mr. Sammy representing respondent adopted the counter affidavit. He submitted that it seems /Si applicant abounded other grounds and decide to focus on the issue of "■t, ik"* written submission. He argued that the decision of Banzi, J. in page 2 % fv shows clearly that this revision was argued by way of written submission that was revision of 707 of 2019. Therefore, his ground was baseless and should not grant. In a short rejoinder, Mr. Hemed insisted that it is true that there is a statement that Revision No. 707 of 2019 was argued by 3 way of written submission however the scheduling of orders for submission was not there. I have considered arguments for and against the grounds for review. I also read the decision subject to this application. On page 2, the second paragraph it is clearly shown that the application was argued by the way of written submission. I quote, "By consent, the revision was argued by way of written submissions". Moreover, it is not necessary for every order in the proceedings to reflect in the decision. However, if the applicant feels his right to be heard has been denied by the failure of the respondent to file and save him with counter affidavit and written submission. The proper way to address this should be by way of an appeal and not otherwise. Based on the established facts. I find that the application has failed to show any sufficient cause for the decision in Revision No. 707 of 2019 to be reviewed. I, therefore, find the application with no merit and is accordingly dismissed. Z.A. Maruma JUDGE 30/06/2021 4

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