

TANZANIA / JUDGMENT

lucia simfukwe vs quotbquot one lodge 2020 tzhcld 3824 8 december 2020

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8 December 2020

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT MOROGORO REVISION NO. 40 OF
2019 LUCIA I. SIMFUKWE..... APPLICANT VERSUS 'B' ONE
LODGE..... RESPONDENT

JUDGMENT

Date of last Order: 26/11/2020 Date of Judgment: 08/12/2020 Z.G.Muruke,«--J,

Applicant was employed by respondent as house keeper on 15th January, 2011 at a salary of 130,000 Tshs per months. She alleged to be terminated orally by respondent on 26th May, 2017, without following procedure, thus filed dispute at CMA on 20th June, 2017, claiming for;

- (i) Salary for month of May Shs. 130,000 (ii) Notice in lieu of salary Shs. 130,000 (iii) Leave pay for 2016/2017 Shs. 151,667 (iv) Pension for 6 years Shs. 231,000
- (v) Certificate of service and, (vi) 12 months' salary as compensation Shs. 1,560,000/= Upon hearing both parties, commission dismissed all the claim except salary for month of May, on the ground of failure by applicant to prove that respondent terminated her. Respondent was ordered to pay applicant her may salary within 14 days from the date of the decision. i Applicant was dissatisfied, She filed present revision raising four grounds of revision in terms of paragraph 10,11,12 and 13 of affidavit in support of revision namely:
 - (i) That commission did not consider applicant evidence on one day off amongst 4 days claimed not to be at work. (ii) Commission did not resolve other issues having found that, respondent did not terminate applicant. (iii) Commission failed to take into consideration applicant evidence in her letter to the respondent that he was not involved in the theft. (iv) Commission decision was based on the part of respondent side more contrary to applicant evidence and what real transpired. On the hearing date applicant was in person while respondent was represented by Mr. Ignas Rynge. Being un represented, applicant asked the court to adopt her affidavit in support of application as submission in support of revision. Respondent counsel did not object the prayer, he equally requested for the same. Court granted prayer by both parties to be able to hear both parties at same level field. Having

gone through affidavit in support of the application, counter affidavit, and CMA records, issued before me is;

- (i) Whether applicant was terminated from her employment. (ii) To what relief are parties entitled. To be able to resolve first issue, applicant evidence at CMA while being cross-examined by respondent counsel from page 19-21 of CMA typed proceedings reveals as follows: 2 Swali: Ulipokuwa kazini kuna uthibitisho gani ulionyesha ulifika kazini. Jibu: Daftari la mahudhurio Swali: leleze tume kuanzia tarehe 25,26,27,28 uliweza kusaini kama kielelezo kilichopokelewa kama MKW-1 Jibu: Tarehe 25 katika daftari sijasaini, tarehe 26 kwa sababu siku ingia kazini nilitoka. Swali: Siku ya tukio ulisaini. Jibu: Sikusaini Swali: Tarehe 27 ulisaini. Jibu: Sikusaini nilishafukuzwa kazi. Swali: Tarehe 28 ulisaini. Jibu: Siku saini walificha daftari Swali: Tarehe 30 ulisaini Jibu: Sikusaini. Swali: Tarehe 31 ulisaini Jibu: Nimesaini Swali: Ijtakubaliana na mimitarehe 25-30 hujasaini kufika kazini Jibu: Sijasaini ni kweli 4 From the evidence attained during cross examination of the applicant, it is clear that applicant did not report to work for 5 (five) days. Respondent evidence lead by Dingo Simba Mawila DW2 is to the effect that, applicant absconded from her employment from 25-30 May, 2017 following being asked about 24,500 Shs, that she received from customer in room number 35 B. The issue was also reported to police for investigation. Applicant did not give any explanation, when asked as to where about the sum of 24,500 Shs, thus decided to file dispute at CMA on 29th May, 2017. 3 From the evidence of applicant while being cross examined, admitted that she was absent from 25-30 May, 2017 without any reason. She admitted that she signed exhibit MKW-1, attendance register (Kitabu cha Mahudhurio) on 31st May, 2017. This court wonders if she filed dispute at CMA on 29th May, 2017 claiming to have been terminated, why signed attendance register on 31st May, 2017? was there any termination then? Through her evidence, applicant has failed to prove that, she was terminated by her employer "B" one lodge. The duty to prove that applicant was terminated was hers, which she did not discharge. From the evidence adduced at CMA, there is no proof that applicant was terminated. It is on record that applicant was on duty for the month of May until 24 May, 2017 when alleged theft of 24,500 Shs occurred. Thus entitled for the salary of May as correctly ordered to be paid by arbitrator. To this court, I do not see why I should depart from CMA decision. This application for revision is without merits, accordingly dismissed. z.GW^- JUDGE 08/12/2020 Judgment delivered in the presence of applicant in person and Baslisa Claudia, Learned Counsel for the respondent. I / I Z.G.Muruke JUDGE 08/12/2020 4

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/lucia-i-simfukwe-v-b-one-lodge-unfairtermination-tanzlii-2020

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