

TANZANIA / JUDGMENT

TUNAKOPESHA FINANCIAL LTD VS MAGRETH MMASSY

COURT
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA ARUSHA SUB REGISTRY AT
ARUSHA LABOUR REVISION NO. 9288 OF 2024 (Originating from Labour Dispute No. CMA/MNY/
BBT/10/23/10/23) TUNAKOPESHA FINANCIAL SERVICE LTD..... APPLICANT
VERSUS MAGRETH VICENT MMASSY..... RESPONDENT

JUDGMENT

5/03/2025 & 19/03/2025 NDUMBARO, J The parties above were in an employment relationship until 15/04/2023 when the employment contract of the respondent came to an end. The evidence on record is to the effect that, the respondent's employment commenced on 16th April 2015 in the position of a Branch Coordinator. The contract was renewable yearly. Upon being issued with the end-of- contract letter, the respondent was displeased with the termination of her employment contract on the basis that her previous employment contracts have been renewed automatically by the applicant for almost six (6) times. Therefore, it was her expectation to have her employment contract renewed the same way it had been done previously. She termed her termination as unfair labour practice and thus filed a labour complaint at the Commission for Mediation and Arbitration (CMA) claiming compensation, due terminal benefits, subsistence allowance, and general damages, in the alternative, the applicant to reinstate the respondent. After hearing the evidence, the CMA had no problems with the termination of the respondent's employment contract. In fact, it was observed that the respondent's contract had come to an end and there was a prior notice issued by the applicant notifying the respondent of her non-renewal of her employment contract (exhibit D2). Therefore, the CMA was not of the view that the respondent failed to prove unfair termination on ground of reasonable expectation of renewal of the contract, hence no unfair labour practice. Nevertheless, the arbitrator went on to issue an order for repatriation and subsistence allowance on the reason that the respondent was recruited from Sumbawanga and that after the termination of her employment contract, the applicant did not repatriate her to the place of recruitment. Basically this is the center of the contention between the parties. 2 The applicant is aggrieved by the order of the Hon. Arbitration and has filed this application seeking for revision of the CMA Award and proceedings on the following grounds;

1. That the trial arbitrator erred in law and in fact by holding that the respondent was recruited at Sumbawanga.
2. That the trial arbitrator erred in law and in fact by holding that the previous contract had no relationship with the last contract of employment.
3. That the learned Arbitrator erred in law by not showing in her award determination of each issue framed, decision thereof and reasons thereof.
4. That the learned arbitrator erred in law by framing and determining an issue of whether the applicant's contract (now the respondent) was supposed to be renewed after the first one has expired while the said issue covers the nature of unfair termination and not unfair labour practice, of which procedures of determining such nature of dispute is different from the other.
5. That the learned arbitrator erred in law for awarding a total of Tshs. 5,945,500/= to the respondent herein while it was not specifically pleaded and proved.
6. That the arbitrator erred in fact and law by failure to properly analyze the evidence and hence reached an unfair conclusion. When the matter was called on for hearing, the applicant was represented by advocate Erick Christopher, the respondent on the other hand was represented by Mr. Herode Bilyamtwe, Personal Representative. The application was argued orally. Supporting the grounds of this revision, Mr. Erick argued that the Hon Arbitrator did not discuss all the issues that were raised at the Commission. According to him, the Hon. Arbitrator discussed only the first issue and thereby came into a conclusion. The counsel supported his argument with the case of Tanga Cement Company Limited vs Christopher 2015 TLR 190. On the issue of repatriation, the counsel submitted that the Hon. Arbitrator misdirected himself to order repatriation costs without considering the place of recruitment as provided by section 43 (3) of the Employment and Labour Relations Act Cap 366 RE 2019. The counsel went further to state that exhibits PI and D1 respectively show only the address of the respondent which at that time was Rukwa but the same does not show the place for recruitment. The counsel also referred to exhibit D3, which was a letter showing that the respondent herein was transferred from Babati to Sumbawanga and while at Sumbawanga she renewed the contract which according to him was a continuation of the former contract. Thereafter the respondent was transferred from Sumbawanga back to Babati the place where her contract came to an end. Therefore, it was his submission that the Hon. Arbitrator erred by ordering payment of repatriation costs while it was not proved that there was a change of recruitment place. To him what changed were only the particulars. The counsel prayed this court to consider the application. Mr. Bilyamtwe on behalf of the respondent, submitted as follows; with regard to the first issue that the Hon. Arbitrator did not determine all issues, Mr. Bilyamtwe maintained that all issues were discussed. On the order for payment of repatriation costs, Mr Herode argued that the Hon. Arbitrator was correct to order for repatriation costs as the applicant is residing at Sumbawanga and her employment ended while she was out of Sumbawanga. Mr Herode

referred this court to the employment contract signed on 16/04/2022, this contract shows that the station was Rukwa, Sumbawanga and therefore according to him, the respondent was recruited from Sumbawanga and not Babati. He supported his argument with the decision of this Court in the case of Rosemary George vs Bollore Africa Logistics, Revision No. 700 of 2019 HC DSM, Mwipopo, J. Mr. Bilyamtwe prayed this application to be dismissed. In rejoinder, the applicant reiterated his submission in chief. Having briefly explained what transpired, it is now time for this court to determine the merit of this application. Basically, two issues will form the basis of my findings. On the first issue, I shall discuss whether the Hon. Arbitrator determined all issues that were framed at the Commission. Determination of issues was dealt by the court of appeal in the case of Hood Transport Company Limited vs East African Development Bank (Civil Appeal 262 of 2019) T20221 TZCA 383 (21 June

2022) where it was stated that; A decision of the court should be based on the issues framed by the court and agreed upon by the parties, and failure to do so could result in a miscarriage of justice. I have revisited the proceedings of the Commission on 24/10/2023 the Commission together with the parties' representatives framed three issues named "Hoja za Ubishani" as follows;

1. Iwapo mlalamikaji alifanyiwa unfair labour practice.
2. Iwapo mlalamikaji alistahili kupewa mkataba mwingine baada ya mkataba wa awali kuisha.
3. Ni haki gani kila upande unastahili. I have also had time to go through the award, I wish to point it out that I do not see any miscarriage of justice occasioned as suggested by the applicant's counsel as all the issues were determined. Even though the Hon. Arbitrator did not specifically mention the issues which composing the Award but if one reads the Award as a whole you will see that all issues were covered. It is therefore that all issues framed at the Commission were determined by the Hon. Arbitrator. My second issue for determination is whether the Hon Arbitrator was justified to order repatriation and subsistence allowance to the respondent. This issue does not need to detain me much as the records speak louder. I have carefully gone through the records of the Commission and from the outset, I wish to differ with the findings of the Commission for reasons to follow; It is on evidence that the respondent's employment with the applicant was on 16th April 2015. This evidence is reflected through the testimony of the respondent (PW1) who testified that she was employed by the applicant on 16/04/2015. Another crucial piece of evidence to support this stance is Exhibit D4. This is the first employment contract of the respondent which shows that the respondent was recruited on 16th April 2015 and the working station was Babati. I have further observed that in this contract, the respondent's address was "P.O. Box 12156 Arusha" To me, the place of recruitment is established by the physical address of the employee at the time of recruitment. I am aware that sometime in the year 2020, the respondent was transferred to Sumbawanga working station See exhibit D3. While at Sumbawanga, the respondent's contract ended and the same was renewed while there, See exhibit D1. I have not found any evidence to show that the respondent had terminated her employment while at Babati before being shifted to Sumbawanga and that she was paid her

terminal benefits and re-employed again to make a new recruitment 8 place at Sumbawanga. Since there is no proof of a new recruitment at Sumbawanga, the renewal of contracts was a continuation of the original employment contract executed at Babati. As the respondent's working station shifted, it is my view that it is only the particulars of the working address which changed and not the place of recruitment. Furthermore, whether the respondent's place of domicile is Sumbawanga is immaterial in determining the place of recruitment. The place of recruitment does not necessarily need to depend on where the employee comes from. It is therefore the finding of this Court that the Place of Recruitment of the respondent was Arusha and it is neither Babati nor Sumbawanga. The respondent should be repatriated to Arusha. This application is revised to the above extent. Since this is a labour matter, no order as to costs is issued. It is so ordered. D. D. NDUMBARO JUDGE
19/03/2025 9

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Prepared on 14 October 2026 · Esheria