

IN THE HIGH COURT OF ZANZIBAR

(INDUSTRIAL DIVISION)

HELD AT TUNGUU

INDUSTRIAL APPLICATION NO 14 OF 2022

(Application for revision of an Arbitral Award given in the Dispute No. DHU/KU/14/2021 on
11/04/2022, Hon. Nemshi Abdalla)

BAHATI VILLA (S & H BAHATI HOUSE).....APPLICANT

VERSUS

HAFIDH OMAR HAFIDH.....RESPONDENT

RULING

27th March & 03rd April, 2024

A. I. S. SUWEDI, J

The applicant, is applying for revision under section 90 (c) of the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar and other several provisions, though this one is relevant. The applicant is challenging an arbitral award given in the dispute no DHU/KU/14/2021 on 11/04/2022 for the reason that it contains errors and irregularities on its face. Originally, it was the respondent, **Hafidh Omar Hafidh** who filed a dispute before the Dispute handling Unit (the Unit) for unfair termination done by the applicant, **Bahati Villa**. In the Form No. 1, the respondent asserted that on 24/01/2021 without any lawful cause, he was terminated by the applicant


through her legal officer and hence, he claimed for compensation for unfair termination, 12 month's salaries @ 400,000 per month and compensation for working in off days.

In his opening statement, the respondent stated that he was an employee of the applicant under a written contract from 26/11/2020 to 31/12/2021 as a Villa Supervisor for TZS 400,000 per month. On 25/01/2021 he was terminated for the allegedly being dissatisfied with his performance and that he was on probation. He requested a compensatory order of 12 months' salaries, TZS 2,000,000/- for disturbance and any other lawful order and just to him.

The applicant in her opening statement denied the allegation and stated that the respondent was legally terminated. Procedures were followed, after noticing the applicant's poor performance, poor cooperation and that he was not getting along well with customers and colleagues, the respondent was given a notice. Then, the written agreement was prepared in order to avoid dispute and both parties signed it on 25/01/2021. The benefit payment followed next and he left peacefully. The applicant then prayed for a dismissal order and TZS 10,000,000/- for inconvenience caused.

Section 90 (c) which the applicant requested this Court to invoke says:

90. The High Court may call for the record of any record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a)
 - (b)
- 
- N/A

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

The High Court may make such order in the case as it thinks fit.

This Court as a division of the High Court can exercise the powers and hence I am passing through the submission to observe the reason given by the applicant in order to perceive whether there is any illegality or any material irregularity done by Hon. Arbitrator.

On the hearing day, the applicant represented by the learned counsel Abdulkhaliq M. Aley and the respondent was under the service of Mr. Zahor J. Khamis, Vakil.

In his submission, counsel Aley adopted the affidavit in support of the application and requested the attention of this Court in the analysis done by Hon. Arbitrator in the issue No. 1 on the termination procedures in connection with section 60 (4) of the Employment Act No. 11 of 2005 (the Act). The fact that procedures were followed and the payment was done, Hon Arbitrator erred in awarding the respondent.

Replying, Mr. Zahor also adopted the counter affidavit and stated further that the applicant during the hearing before the Unit did not tender any exhibit prove that termination was fair but respondent proved that there was infringement of his rights. The applicant's claimed under paragraph two that the respondent failed to fulfilled his work, poor cooperation and he did not get along well with customers and colleagues, but the grounds were stated before this Court and not before the Unit. If the respondent committed any disciplinary offence subject to disciplinary procedures, the evidence concerning that had to be adduced. This is the legal requirement under section 122 of the Act. He admitted the payment to have been done but no procedure was followed since the employee under probation have the same right with other employees.

Counsel Alley rejoined by insisting that Hon. Arbitrator erred as procedure under section 60 (4) of the Act was followed and Hon. Arbitrator just said that procedure must be followed.

Assessors after being passed through the records and submission made, they both are of the opinion that Hon. Arbitrator erred in awarding the respondent and the same should be quashed.

Before the Unit, after the mediation marked failure, the dispute transferred to arbitration and two issues were formulated that:

1. Iwapo kuachishwa kazi kwa Mlalamikaji haukuzingatia taratibu za kisheria au la?
2. Nini nafuu ya wadaawa?

The applicant evidence was that the respondent was her employee as Supervisor with one year contract which included three months probation period. The evidence show that the respondent was terminated after being warned in the first instance. Following of the poor service the applicant decided to terminate him and he was paid all his rights.

On the side of the respondent, the evidence show that he was an employee of the applicant from 26/11/2020 to December, 2021 as a Villa Supervisor for TZS 400,000 per month. On 25/01/2021 he was terminated with no cause given but was given a letter (the letter and receipt of payments were tendered as evidence). He also insisted that the termination was unfair and he also admitted that he was under probation when termination done.

Form that evidence, Hon. Arbitrator relied on section 60 (4) of the Act as said by counsel Aley and concluded that the applicant was required to give 14 days notice and he saw applicant to have infringed that provision and he awarded 6 months' salary compensation @TZS 400,000/- per month.

I straightly perused the records of the Unit, as said the respondent claimed to be unfairly terminated and the applicant said the termination was

fair. Unfortunately, both parties did not tender an employment contract, but what I have noted from the respondent's opening statement and both parties' evidence that the respondent started to work with the applicant with fixed term contract of one year from 26/11/2020 to 31/12/2021. On the other side, both parties confirmed that the respondent was terminated on 25/01/2021 which was 2 months from the date of employment. The applicant's evidence said the respondent was on 3 months probation period and the respondent did not question the witness by showing he has denied the status. This is to say the respondent was under one year contract with 3 months probation and that the termination was done within probation period. Thus, I need to see the law what it is saying about probation period. Section 60 (2) & (4) is relevant here. The provisions provides:

60 (2) Any employee who is on temporary service not to be in writing shall be on probationary period of three months from the date he or she was so employed.

The section allows employment on temporary basis with 3 months probation period and incase of termination within that period subsection (4) says:

(4) Either party to a probationary contract of service may terminate the contract by giving the other party 14 days' notice or payment of 14 days wages in lieu of such notice.

The provision is so plainly that requires no further interpretation. An employee under probation period may be terminated by issuing 14 days notice or payment of 14 days wages in lieu of such notice. The respondent instantly has been paid as shown in the 2 exhibits tendered by him. Exhibit “**RES 01**” is a dismissal letter and the of it is as follows:

.....

Uongozi wa S&H BAHATI HOUSE baada ya kufikiri kwa kina juu ya utoaji wako wa huduma katika kipindi cha majaribio hapa kazini, hatujaridhishwa na utendaji wako kwani kumekua na malalamiko ya mara kwa mara kutoka kwa wafanyakazi wenzako halkadhalika na kwa wageni wetu.

Uongozi umeamua kukuachisha kazi kuanzia leo tarehe 25.01.2021. kuanzia leo hii ndugu Hafidh Omar Hafidh tunaomba utambue ya kwamba wewe si mfanyakazi wetu tena

Uongozi umehakikisha ya kua haki zote stahiki utazipata kabla kuondoka kazini

..... [Emphasis is mine]

The second exhibit marked as “**RES 02**” is a receipt of payment which says:

STAKABADHI YA MALIPO YA MSHAHARA WA SIKU KUMI NA TANO
(15) YA KUACHISHWA KAZI

Mimi Hafidhi Omar Hafidhi mkaazi wa Jambiani Zanzibar. NAKIRI NA KUSTAKABDHI **kupokea mshahara wa siku kumi na tano (15) kutoka kwa S&H BAHATI HOUSE, ikiwa ni malipo ya siku kumi na tano (15)** kama ilivyo ainishwa katika mkataba wangu wa

kazi kwa kuachishwa kazi ndani ya masaa 24. Nakiri kutokuwa na madai yeyote dhidi ya S&H BAHATI HOUSE

..... [Emphasis Added]

Close concentration on the above two exhibits, I failed to understand whether the applicant complied with law as required by section 60 (4) above quoted. Exhibit marked "**RES 01**" just promised the respondent that he will get all his due rights before going. Now the question what are those rights the applicant gave the respondent? Exhibit "**RES 02**" shows that the respondent have been given 15 days payment for 24 hours dismissal. Is that the payment in lieu of notice? If it is the payment in lieu of notice, did the applicant paid the respondent for the month of January, 2021? Bear in mind, the termination done on 25/01/2021 of which the employee is entitled to receive a monthly payment. The applicant's evidence is silent on this, she did not prove that she paid 14 days with the respondent's January salary.

The part of the applicant's testimony shows that:

Kwa mujibu wa sheria tumemlipa siku 15, mishahara yote aliyokuwa anadai, overtime

Though, the Evidence Act, No. 9 of 2016 under section 64 says all facts, except the contents of documents or electronic records, may be proved by oral evidence, but for financial matters, documentary evidence is very crucial. Hence, I am not convinced that the applicant paid the respondent as

said by her witness, especially when you consider the fact that the applicant was the one responsible to prove that the termination was valid. For this reason, I am hesitating to fault Hon. Arbitrator's decision and hence, I am appreciating the opinion given by assessors, however I am disagreeing with them for the reason stated herein.

Consequently, the application has no merit and the same is hereby dismissed without costs.

DATED at TUNGUU ZANZIBAR this 03rd day of April, 2024



A. I. S. Suwedi

JUDGE – INDUSTRIAL COURT