



CYMBELL
ATTORNEYS

Employee Termination.

**UNFAIR
DISMISSAL**

Dear John Smith,

I inform you that your emp

BREACH OF CONTRACT AND UNFAIR TERMINATION IN TANZANIA.

Review of the recent Court of Appeal decision in; Momole Rose Nyimbo v. Warrior Security Limited [Civil Appeal No. 298 of 2022 arising from Labor Revision No. 12 of 2017] CAT

INTRODUCTION

In different labor cases Parties have embarked on the wrong legal recourse of seeking their righteous compensation from termination of employment contracts. All labor disputes are addressed through Form No. 1 in the Commission for Mediation and Arbitration (CMA), identifying the nature of the claim. Each claim has a distinct condition and relief compared to the other, such as breach of contract compared to unfair termination. Some of the unsuccessful labor cases have been rooted in failure to distinguish and pursue the appropriate claim.

MATERIAL FACTS OF THE CASE

In the above case, the appellant was employed by the respondent permanently as an office administrator on the 6th of May 2016, but unfortunately, his contract was terminated after 3 Months, to wit on the 9th of August of 2016 due to economic constraints.

The appellant filed a complaint to the (CMA) seeking **compensation for unfair termination**. The CMA pronounced termination was substantially and procedurally unfair and awarded the appellant 33,600,000.00. Dissatisfied with the decision, the respondent successfully revised the CMA decision by the High Court vide Revision No. 12 of 2017. The High Court stated that CMA had no jurisdiction to entertain the appellant's claims that were based on unfair termination as the appellant had worked for less than six months with the respondent.

DETERMINATION BY THE COURT OF APPEAL

This time the appellant approached the Court of Appeal of Tanzania with two grounds, which one ground was abandoned later, bringing one ground of appeal **“That the appellant having a permanent contract was not subject of limitation under section 35 of the Employment and Labor Relations Act No. 6 of 2004.”**

The Court ruled out that the provision of *section 35 of the Act* specifically deals with unfair termination, which bars an employee from instituting a claim for unfair termination in the CMA unless such person has served for a period of not less than six months.

A dispute over termination from a specified employment contract finds its remedies in the claim of breach of contract, which is compensation for the remaining employment period. For an unspecified/permanent employment contract, an employee is required to seek unfair termination to obtain relief of 12-month remuneration, as provided under *section 40 A and 40 (1)(c) of the Employment and Labor Relations Act Cap 366 R:E 2019, respectively.*

The court further stated an employee who has worked for less than 6 months cannot sue for unfair termination, but such an employee can access the CMA through other claims such as breach of contract for the specified period contract. In this case, the appellant claimed through the referral Form No. 1 for unfair termination which could not yield success as he only offered a 3-month employment service.

Furthermore, the court stated that the provision of *section 35 of the Act* deals with all types of employment contracts and does not identify certain contracts to be covered there. The provision also lays the condition necessary to claim for unfair termination, that is 6 months or more.

CONCLUSION

Therefore, an employee must work for at least 6 months or more to claim unfair termination; or rather if the contract is a fixed term contract it's proper to resort to breach of contract since this nature of contract is not barred by section 35 of the Act. This case joins other landmark cases to hammer the restriction of employees who just offered less than 6 months of service not to embark on unfair termination.

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