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# LEGAL NEWS

31 May 2024



## Court of Appeal Determines a Labour Matter Relating to Discrimination on Termination of Employment

The Court of Appeal of Tanzania (the Court), on 21 May 2024, delivered a judgment in the case of **Robert Shemhilu vs. Tanzania Electric Supply Company Limited, Civil Appeal No. 136 of 2022**. In its judgment, the Court held that the employer has to apply the sanctions consistently with the way it has been doing in the past to other employees. Further, the Court observed that when an employee is engaged on permanent and pensionable terms, a new appointment on a fixed term contract does not automatically terminate the permanent contract unless vividly expressed.

### Background of the Case

The Appellant was employed by the Respondent for more than a decade as a government officer. During his contract, he was subjected to charges of gross negligence and inefficiency, hence his termination. The Appellant filed a labour dispute before the Commission for Mediation and Arbitration (the CMA) claiming the termination to be unfair in substance and procedure. He challenged the decision of the Disciplinary Committee and its jurisdiction to hear the dispute. The Appellant thus prayed for reinstatement and compensation on account of unfair termination. The CMA decided the matter in his favour, finding termination to be unfair in both, substance and procedure. Consequently, the CMA awarded him terminal benefits of TZS 7,986,000/= (monthly salary) times twelve months (the remaining period of the contract) which made a total of TZS 95,832,000/- as compensation for the unexpired term of the contract.

Following the decision of the CMA, both parties were aggrieved by the arbitral award and lodged revision applications at the Labour Division of the High Court (the High Court). The High Court consolidated the two applications and heard them together. Eventually, the High Court held that termination of the Appellant was substantively fair, but procedurally unfair. All the same, the High Court upheld the award of TZS 95,832,000/= by the CMA. Following that decision, the Appellant approached the Court challenging the decision of the High Court on two grounds of appeal, namely: (i) the High Court erred in holding that there were valid reasons for terminating the Appellant contrary to the evidence on record; and (ii) the High Court erred in law for failure to fault the arbitrator's decision in awarding the reliefs sought.

### Arguments Raised by the Parties

When the Appellant lodged his appeal to the Court, he was basically claiming that the High Court judge failed to fault the CMA award which acted in excess of its powers by awarding compensation as a substitute of

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#### About ECRA Attorneys

ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

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reinstatement as prayed. Also, the Appellant claimed that he was subjected to unfair trial by not being availed with requested documents which would assist him in his defence. Instead, he was only supplied with the charge sheet but not the report of the Controller and Auditor General (CAG) which was the basis of all the charges. The Appellant subsequently argued that the Select Disciplinary Committee (the Committee) was not his disciplinary authority and thus it had no jurisdiction to hear the dispute.

The Respondent, on his part, argued that what the disciplinary authority did was to appoint a Committee to deal with the matter and after completion of the hearing, it made a recommendation to the employer. Moreover, the Respondent submitted that the Appellant was supplied with all the relevant documents he asked for, however, the Respondent admitted that the Appellant was not supplied with the whole of the CAG Report but only the relevant parts which concern the charges against him. The CAG Report had other details which concerned charges against other employees which were not relevant to the Appellant.

## Determination of Issues and Decision of the Court

In the determining whether or not the Appellant was wrongfully terminated, the Court held that the High Court erred in holding that there were valid reasons for the Appellant to be terminated. The evidence on record shows that singling the Appellant out (who was just a member to the tender board) merely because he ought to have advised the board accordingly was wrong. The Appellant was not responsible for initiating the tender, and if anything, the CAG Report showed that the one responsible for that assignment and approval was the Secretary to the Tender Board.

Based on the foregoing, the Court found that the Appellant was wrongly charged for the mistakes of the board. Unlike the High Court, the Court was of the view that the Respondent had no valid reasons to charge the Appellant for decisions of the tender board. Further, the Court ruled that the act contravened rule 12(5) of the Employment and Labour Relations (Code of Good Practice) Regulations, GN. No. 42 of 2007 which prohibits the use of discriminatory procedures in terminating employees. Consequently, the Appellant's appeal succeeded to the extent that the Appellant's termination was declared substantively and procedurally unfair. Furthermore, the Court added that, as the first contract of employment was still subsisting but under improved terms and conditions, the order of compensation was the most appropriate in the circumstances. Therefore, the Court proceeded to order compensation of eighteen months' remuneration to the Appellant and each party was ordered to bear its costs.

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Copy of the Judgment of the Court can be accessed by [clicking here](#)

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