

18 August 2023



## Court of Appeal Rules in Favour of Freedom of Worship

- Fair hearing principle clarified
- Compensation provision under the ELRA expounded
- Employer ordered to pay 12 months' remuneration as compensation

Recently, the Court of Appeal of Tanzania (CoA) delivered its judgement in Civil Appeal No. 398 of 2020. This matter emanates from the decision of the Commission for Mediation and Arbitration (the CMA) that the termination of the Respondent who was an employee of the Appellant was substantively and procedurally unfair.

### Background

The Respondent was employed by the Appellant in 2004 and the employment was terminated in 2015 on the ground of absenteeism. The Respondent claims that the termination was due to her absence from work every Saturday because being a Seventh Day Adventist (SDA), she was obliged on that day to attend church services, dedicate herself to prayer and abstain from any form of work. Due to the above, the Respondent lodged an unfair termination claim against the Respondent at the CMA claiming to be discriminated because of her religion and belief, and that her freedom of worship and conscience was abrogated.

Upon conclusion of the hearing, the CMA ruled that the procedure applied to charge, hear and dismiss the Respondent was unfair due to the fact that the Respondent was not accorded an opportunity to put forward any mitigating factors before the decision to terminate her employment was made. Consequently, the CMA ordered that the Respondent be reinstated to her employment from the date of termination without loss of remuneration. In the alternative, the Appellant was ordered to pay remuneration for 20 months as compensation in lieu of reinstatement. Additionally, the Appellant was adjudged liable to pay TZS 24M as reparation for discrimination.

Aggrieved by the CMA's decision, the Appellant approached the High Court seeking revision of the CMA's award. The High Court upheld the CMA's finding on the unfairness of the termination both substantively and procedurally. Regarding reliefs, the High Court vacated the order of reinstatement, quashed and set aside the order of payment of 20 months remuneration as well as compensation for discrimination. The High Court ordered the Respondent to be paid remuneration from the date of termination to the date of the judgement and compensation of 12 months remuneration instead of reinstatement.

Dissatisfied with the decision of the High Court, the Appellant filed revision to the CoA mainly on three grounds, namely whether the reason for the termination

For further information on legal updates please contact:

E: [info@fbattorneys.co.tz](mailto:info@fbattorneys.co.tz)

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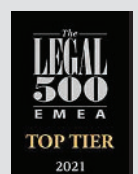
### FB Attorneys

8th Floor, Amani Place, Ohio Street  
P. O. Box 19813  
Dar es Salaam, Tanzania  
T: +255 22 2135994/5  
E: [info@fbattorneys.co.tz](mailto:info@fbattorneys.co.tz)  
W: [www.fbattorneys.co.tz](http://www.fbattorneys.co.tz)

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was fair and valid; whether the termination was in accordance with a fair procedure; and whether the award of compensation is proper.

## Arguments by the Parties

The Appellant argued that the Respondent was bound by her contract of employment and invoked the principle of sanctity of the contract which demands that parties to a contract must honour their contractual obligations. The Appellant further insisted that if the Respondent could not work on Saturdays for a religious reason, she should have not committed herself to such a contract. In response to the arguments above, the Respondent asserted that the termination arose from the Respondent's refusal to work on Saturdays, which was necessitated by her attendance to church services in exercise of her freedom of worship pursuant to Article 19(1) of the Constitution of the United Republic of Tanzania.

## Decision of the CoA

In considering whether the termination was fair and valid, the CoA held that the principle of sanctity of contract, censuring the Respondent for committing herself to a contract she could not fulfil on religious ground is obviously mistaken, for it ignores the centrality of the constitutional guarantee of freedom of worship and conscience. The CoA further held that an employment practice that penalizes an employee for practicing her religion is palpable invasion of her dignity in that it supposes that her religion is not worthy of protection or respect. It is a form of intolerant compulsion to yield to an instruction at odds with sincerely held beliefs on pain of losing employment. The CoA concluded that the Appellant as the employer had a duty of finding a reasonable accommodation for the Respondent and her constraining religious beliefs but it did not discharge that duty.

In determining whether the termination was in accordance with a fair procedure, the CoA ruled that in the event the High Court Judge found that the termination was based on invalid reasons which rendered the termination substantively unfair, the determination of procedural compliance was inconsequential and could not add any value in the wake of lacking valid reasons for the termination. Therefore, the CoA held that the question of the fairness of the procedure employed in the termination is inconsequential.

Finally, as far as compensation is concerned, the CoA stated that reinstatement or reengagement or compensation in section 40(1) (a) (b) and (c) of the Employment and Labour Relations Act (the ELRA) must be read disjunctively. The 'or' in the subsection is not conjunctive, it is disjunctive. Therefore, the CoA quashed and set aside the order for payment of remuneration from the date of termination for lack of legal basis and upheld the High Court order of payment of compensation of 12 months remuneration.

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