IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

LABOUR REVISION NO. 27025 OF 2025

(Originating from Labour Dispute No. CMA/MZA/NYAM/49/2025/272025 in the Commission for Mediation and Arbitration for Mwanza at Mwanza)

THE REGISTERED TRUSTEES OF

TANZANIA EPISCOPAL COUNCIL.....APPELLANT

VERSUS

FABIAN ANACLET MASSAGA.....RESPONDENT

RULING

20th &27th April, 2026

KAMANA, J.

This is an application for revision of the ruling delivered by the Commission for Mediation and Arbitration (CMA), in which the applicant, the Registered Trustees of Tanzania Episcopal Conference, was found to have breached the fixed-term employment contract entered into with the respondent, Fabian Anaclet Massaga. Consequent upon that finding, the CMA ordered the applicant to pay the respondent a total sum of TZS 532,104,000/-, being the remuneration, the respondent would have earned had the contract not been breached.

The factual background to this application is as follows: the respondent is a medical doctor in the service of the government as he is an employee of Muhimbili National Hospital. On 25th January, 2020,

under the arrangements between the applicant and the government, the respondent was seconded for unspecified term to Bugando Medical Centre (BMC) in the capacity of medical specialist.

Shortly thereafter, he was appointed to be the acting Director General of BMC. He served in that capacity up to 24th July, 2021 when he was appointed to be the Director General of BMC for a period of three years which ended on 23rd July, 2024. On 24th July, 2024, the respondent was re-appointed to serve in that capacity for the period of three years which would expire on 23rd July, 2027. The re-appointment was effected through a letter of appointment on contract terms dated 26th June, 2024 (Exh.A1).

It is on record that on 4th March, 2025, the applicant terminated the contract that appointed the respondent as the Director General through the letter dated 4th March, 2025 (Exh.A11). The termination did not please the respondent who instituted the labour dispute that was held in his favour.

Aggrieved, the applicant presented four issues for the determination of this Court. ***One***, whether it was proper for the respondent to sue the applicant whilst the relied employment contract (Exh.A1) was not issued by the applicant; ***two,*** whether an employee

can have two co-existing employment contracts at the same working station; ***three,*** whether the arbitrator failed to properly analyse the evidence in record; and ***four,*** whether the arbitrator failed to correctly apply the law in nature of the dispute and throughout the proceedings.

The application was disposed of by written submission. Both parties complied with the scheduling order.

Submitting in support of the first issue, Mr. Innocent Bernard, learned Counsel for the applicant, prefaced his arguments by contending that the appointing authority for the post of the Director General is the applicant and not the Chairman of the Board of Trustees of BMC. He argued that the said powers of appointment are derived from article 6 of the Trust Rules of Bugando Medical Centre, 2020 which were admitted as Exh.D2.

Guided by that argument, Mr. Bernard contended that the alleged re-appointment letter (Exh.A1) was not issued by the applicant under article 6 of the Trust Rules but rather by the Board Chairman. Given that, he held the view that the reappointment of the respondent as the Director General by the Board Chairman was void as the said Chairman had no authority to make such an appointment.

Mr. Bernard submitted that for a contract to be valid, the same must, among other things, be signed by the persons with capacity to enter into the contract. Fortified by that position, he held the view that the alleged employment contract was void as it was entered by the Board Chairman who had no capacity to appoint the respondent.

The learned Counsel went on to assail Exh.A1 as invalid as the procedures for re-appointment were not adhered to. He amplified that under Rule 6 of the Trust Rules, the respondent was supposed to initiate the procedure for his re-appointment by notifying the appointing authority of his intention to be re-appointed which was not done.

To support his contentions, Mr. Bernard invited this Court to be guided by the position of the Court of Appeal in the case of **Gaudence Pius Kitutu v. The Registered Board of Trustees of YMCA,** Civil Appeal No. 261 of 2022-CAT (Unreported). In the cited case, the apex Court underscored the principle that a void contract has no effect.

Responding, Mr. Flodius Mutungi and Mr. Ernest Mhagama, learned Counsel for the respondent, contended that it was proper for the respondent to sue the applicant as the latter was the one who terminated the employment contract. They argued that the re-appointment of the respondent was terminated through Exh. A11 which

in their views confirmed the existence of employment relationship between the parties.

Messrs Mutungi and Mhagama submitted that as per the Trust Rules, the respondent was appointed by the applicant. They contended that the re-appointment letter (Exh.A1) written by the Board Chairman was a procedural requirement applicable to every employee appointed by the applicant.

To reinforce this argument, the learned Counsel referred to the termination letter (Exh.A11). They argued that the said letter states clearly who was the respondent, his position in BMC and the reasons for termination. The learned Counsel further argued that in Exh.A11, the applicant did not state that it terminated the employment contract for a reason that it did not recognise the respondent as the Director General of BMC or the respondent did not notify it of his intention to be re-appointed.

I have considered the competing arguments advanced by the legal minds before me. At the outset, I agree with Mr. Bernard that according to Rule 6 of the Trust Rules, the Director General of BMC is appointed by the applicant and not the Board Chairman. Having associated myself

with Mr. Bernard's position, it is apposite to reproduce part of the letter that re-appointed the respondent as follows:

'Dr. Fabian A. Massaga

Bugando Medical Centre,

S.L.P. 1370

MWANZA.

RE: LETTER OF APPOINTMENT ON CONTRACT TERMS

First and Foremost, I wish you peace and joy from our Lord Jesus Christ.

Kindly caption the above refers.

I am authorized to inform you that, your have been re-appointed as the ***Director General*** *at Bugando Medical Centre with effect from the date stated below, on the following principal terms and condition:*

Terms of service;

1. *This contract shall be for a period of* ***36 months*** *from* ***24th July 2024*** *to* ***23rd July 2027.***
2. *Three months before the end of the contract you may apply for renewal of contract; however, the Board of Governors have the right to approve of disapprove the application.*
3. *……*

+Renatus Nkwande

BOARD CHAIRMAN-BMC'

From the above excerpt, it is clear as crystal that the Board Chairman was conveying a message in respect of the re-appointment. This is evidently shown in the said letter through the words **"I am authorized to inform you that you have been re-appointed as the Director General at Bugando Medical Centre..."** By being authorised, it goes without saying that there was an authority that authorised the Board Chairman to inform the respondent of his re-appointment.

That being the position, it is vital to determine at this stage which authority re-appointed the respondent. From the records, it is clear that the respondent was terminated by the applicant through Exh. A11. The relevant parts of Exh. A11 reads:

> *Dr. Fabian A. Massaga*
>
> *Director General*
>
> *Bugando Medical Centre*
>
> *P.O. Box 1370*
>
> *MWANZA*
>
> ***RE: TERMINATION OF CONTRACT AS A DIRECTOR GENERAL***
>
> *In its extraordinary Plenary Assembly held on February 14th, 2025 at Kurasini Centre. The Conference had an opportunity to*

review the report of the task force which earlier visited with you and other members pf Bugando. Some of the issues raised in the report I was able to hear and witness during my last visit of Bugando on February 19th, 2025.

On behalf of the conference, I would like to thank you for your tireless effort and dedications which you offered for the gopof of Bugando Medical Centre. So many good things have been achieved during your tenure-congratulation and thank you so much.

Nevertheless, it is unfortunate that due to some serious concern on governorship and management of Bugando Centre, We have to revoke you position as the director general and end your contract with immediate effect from today March 4th, 2025. Please hand over your office to the acting director General.

For your new position in the hospital please contact Human resource officer of Bugando Medical Centre. I know this might not be easy news to handle. But it is my hope and prayers that you transition can go well.

Sincerely in the Lord,

+Wolfgang Pisa, OFMCap

Bishop of Lindi and President of Tanzania Episcopal Conference'

From Exh.A11, it is clear that the respondent was appointed by the applicant. This is because, the termination letter expressly recognised the respondent as the Director General. Further, the letter revoked the appointment and terminated the employment contract. This, in my view, constitutes clear evidence that the applicant treated and acknowledged the respondent as having been duly appointed. In other words, by opting to terminate the respondent's contract instead of declaring the appointment invalid, the applicant by implication affirmed the existence of both the appointment and contract.

In the same vein, the reason advanced by the applicant for terminating the employment contract, as rightly contended by Messrs Mutungi and Mhagama had nothing to do with irregularity in the appointment of the respondent. According to Exh. A11, the termination was occasioned by governance and management concern. This, in my view, leads to a conclusion that the appointment was not in question.

Assuming for the sake of argument that the respondent was invalidly appointed by the Board Chairman, the applicant's conduct cured the defect. It is my considered view that by recognizing the respondent as the Director General, accepting his services and ultimately terminating the employment contract, the applicant ratified the

appointment. If that would be the case, the applicant, in my view, is estopped from denying the respondent's appointment as the Director-General after having benefitted from his service in that capacity.

Concerning Mr. Bernard's contention that the respondent did not notify the appointing authority of his intention to seek the re-appointment, I am of the considered opinion that although that was a mandatory requirement for the re-appointment, the applicant opted to re-appoint the respondent without such notice. In those circumstances, the respondent is not to blame for such incongruity.

For those reasons, I am inclined to agree with Messrs Mutungi and Mhagama that the absence of any reference to defects in the appointment coupled with termination on governance and management grounds is clear indication that the respondent was duly appointed. In such circumstances, the applicant cannot approbate and reprobate by treating the appointment valid for the purpose of termination and invalid for the purpose of employment. Given that, it was proper for the respondent to sue the applicant.

Coming to the second issue, Mr. Bernard submitted that the respondent is a permanent and pensionable government employee serving in the capacity of medical specialist. He submitted further that

the respondent was seconded to BMC and his status of employment remain the same up to the time of filing his submission.

In that context, Mr. Bernard argued that the respondent has been paid his monthly remuneration as a medical specialist and his remuneration was not suspended after being appointed as the Director General of BMC. He argued that the appointment of the respondent to the post of the Director General does not amount to an employment contract but rather an administrative position.

He contended that while employment contract establishes the employer-employee relationship, the appointment to the administrative post does not create such a relationship. To strengthen his argument, the learned Counsel cited the case of **Komanya Eric Kitwala v. Permanent Secretary Public Service Management and Good Governance and Another,** Misc. Cause No. 24 of 2023-HC (Unreported). In the said case, this Court had this to state:

> *'I have dissected the facts of the entire case and failed to find justification in the state attorney's position. Revocation of the applicant's post as a District Commissioner was officially communicated to him via a letter with reference No. CPF/K/6155/5 dated 18th*

November 2021 while the retirement complained of came later on 15th August 2022. As correctly submitted by Mr. Mtobesya, at the time of his retirement, the Applicant 20 was no longer serving as a District commissioner'

Mr. Bernard went on to argue that an employee cannot have two co-existing full time employment contracts in the same organization and at the same working hours. Given that, he held the view that since the respondent was a government employee seconded to BMC, he could not have another employment contract under Exh.A1.

In reinforcing this argument, the learned Counsel cited the case of **Robert Shemhilu v.Tanzania Electric Supply Co. Ltd,** Civil Appeal No. 136 of 2022-CAT (Unreported). In the said case, the apex Court observed:

'The signing of the second contract with improved terms and conditions built on the conditions of the first contract. Technically, given the nature of the appellant's job which was not part time, he could not have been under two contracts of employment at one and the same time.'

By way of an assumption that Exh.A1 is a valid one, Mr. Bernard contended that a fixed term employment contract does not

automatically terminate the permanent and pensionable agreement unless specifically provided for. In that case, he contended that the CMA slipped into an error in deciding in favour of the respondent who is still working and paid monthly remuneration by BMC.

Buttressing his stance, the learned Counsel cited the case of **Othman R. Ntarru v. Baraza Kuu la Waislamu Tanzania (BAKWATA),** Labour Revision No. 323 of 2013-HC (Unreported). In the said case, this Court held that when an employee is on permanent and pensionable terms, a new appointment on a fixed term does not automatically terminate the permanent and pensionable contract unless the employer's manual, code or policy provides otherwise.

In response, Messrs Mutungi and Mhagama held the view that it is possible for an employee to have two employment contracts in the circumstances of this case. They contended that the respondent is a permanent and pensionable government employee who was seconded to BMC by his employer. They submitted that while working at BMC, the respondent rose through ranks up to when he was employed as the Director General under the fixed term contract.

The duo contended that Exh.A1 should be let to speak for itself as it is about the employment on contract basis. As regards the cited case,

the learned Counsel considered them distinguishable as they had different material facts from the present case.

Having considered the rival submissions, I am of the considered view that the resolution of this issue turns on the proper legal characterization of the respondent's status while serving in BMC.

It is not in dispute that the respondent is a permanent and pensionable government employee who was seconded to BMC for unspecified term. It is on record that, while on secondment, he was appointed to the position of Director General under a fixed-term arrangement which introduced new duties, responsibilities and an enhanced remuneration structure.

That being the case, it is my finding that that such an appointment cannot be reduced to a mere administrative designation devoid of contractual effect as contended by Mr. Bernard. This is because, as rightly argued by Messrs Mutungi and Mhagama, an introduction of a distinct salary structure, additional benefits and executive responsibilities indicates an intention to create a specific contractual regime governing the office of Director General, separate from the respondent's substantive public service position.

However, I am equally unable to agree with the proposition that the respondent entered into two concurrent and conflicting contracts of employment. The evidence shows that the respondent discharged a single full-time executive function at BMC in the capacity of the Director General. The fact that his remuneration was sourced partly from the Government, as his substantive employer, and partly from BMC by way of a top-up, does not, without more, establish dual employment. Rather, it reflects a structured arrangement whereby the respondent retained his underlying public service status while his remuneration was supplemented to reflect the demands of the higher office.

In that regard, it is my view that that a secondee like the respondent may lawfully be appointed by the host institution to a higher office, including an executive position, provided such appointment does not purport to alter his substantive employment status with the parent employer. Such elevation is properly construed not as a promotion in the strict sense within the public service, but as a contractual appointment operative for the duration of the secondment.

Accordingly, it is my position that the respondent's appointment as Director General under the fixed-term arrangement constituted a valid and enforceable contractual framework governing his service in that

capacity, while his permanent and pensionable status subsisted in the background. The two arrangements were therefore not co-existing in the sense of creating conflicting obligations, but were instead complementary and functionally integrated within a single continuum of service.

In taking this position, I am mindful of the decision of the Court of Appeal in **Robert Shemhilu (supra).** However, I find that the circumstances of that case are materially distinguishable from those in the present matter.

In the cited case, the appellant, Robert Shemhilu, was a permanent and pensionable employee of the respondent, and his subsequent appointment to the position of Deputy Director was expressly stated to be built upon and derived from the original contract of employment. In other words, the new position did not create a separate and independent contractual regime but rather constituted a continuation or variation of the existing employment relationship. It was in that context that the Court of Appeal observed that the appellant could not be said to have been serving under two contracts of employment at the same time.

The present case stands on a different footing. Here, the respondent was not elevated within the same contractual framework. Rather, while on secondment, he was appointed to the office of Director General under a distinct fixed-term arrangement, introducing new duties, responsibilities and a differentiated remuneration structure, including a top-up payable by BMC. Unlike in the Robert Shemhilu case, there is no indication that the terms of the Director General position were expressly built upon or incorporated into the respondent's original permanent and pensionable contract.

Moreover, the respondent's continued receipt of his substantive salary from the Government, coupled with the top-up from BMC, in my opinion, is more consistent with a secondment arrangement with enhanced remuneration than with the existence of two parallel employment contracts within the same framework. The respondent was performing a single full-time executive role, and the payment structure merely reflected the composite nature of that arrangement.

Given that, the principle enunciated in **Robert Shemhilu (supra)** does not apply with equal force to the present case, as the factual and contractual matrices are fundamentally different.

Concerning the case of **Othman R. Ntarru (supra)**, I am in full agreement with the holding that a new appointment on a fixed-term basis does not, in itself, automatically terminate an existing permanent and pensionable employment, unless such consequence is expressly provided for in the employer's governing instruments, including its manual, code or policy.

However, that principle must be understood within its proper context. It is my considered opinion that the absence of automatic termination does not necessarily imply that the two arrangements operate concurrently as independent and co-equal contracts of employment. Rather, it signifies that the underlying permanent and pensionable status may continue to subsist in the background, subject to the terms and conditions governing the subsequent appointment.

In the present case, the respondent's appointment as Director General under a fixed-term arrangement introduced a distinct set of obligations, responsibilities and remuneration, thereby creating a specific contractual framework governing his service in that capacity. While this permanent and pensionable status was not extinguished, it cannot be said to have remained operational in parallel with the same force and

effect as before. Instead, it was effectively held in abeyance for the duration of the fixed-term appointment.

Given that, I find the case of **Othman R. Ntarru (supra)** supports the position that the respondent's substantive employment was not terminated, but it does not advance the argument that he was simultaneously serving under two independent and competing contracts of employment.

As regards the fourth issue, Mr. Bernard submitted that the CMA failed to apply the law when admitting the bank statements (Exh. A2 to A10). He explained that the bank statement being the banker's book, its admission needed to comply with the provisions of section 84(1) of the Evidence Act, Cap.6 [RE.2023] as interpreted by this Court in the case of **Delina General Enterprises Ltd v. KCB Tanzania Ltd and KCB Kenya Ltd,** Commercial Case No. 16 of 2022-HC (Unreported).

In the said case, this Court interpreted section 78(1) now section 84(1) as follows:

> *'Going by the literal wording of the provisions of section 78 (1) there are three cumulative ingredients that the court has to consider in admitting copy of the banks's book in judicial proceedings, these are:*

i. The book was at the time of making of the entry one of the ordinary books of the bank;

ii. The entry was made in the usual and ordinary course of business; And

iii. the book was is in the custody or control of the bank.'

Guided by that position, Mr. Bernard contended that the said exhibits should be expunged as their admission did not comply with the requirements of section 84(1).

Responding, Messrs Mutungi and Mhagama prefaced their arguments by correctly putting the records clear that Exh.A4 is not a bank statement. As regards the issue, they submitted that the arbitrator was correct to admit those documents, as those documents were tendered as data messages or electronic print outs.

They contended that the respondent clearly laid foundation as per the requirement of the law on how he obtained those documents, how he printed, nature of the computer and how he kept the documents and finally tendered them all before the CMA. The learned Counsel argued that the CMA is not bound by the technicalities as far as the admissibility

of the documents are concerned, as the law under section 89(4) (b) of the Employment and Labour Relations Act, Cap. 366 [RE.2023] (ELRA) requires the Commission to deal with merit of the case and avoid the legal technicalities like the admissibility of document.

In the alternative, Messrs Mutungi and Mhagama contended that assuming those documents were not reliable and arbitrator erred in admitting them, still does not deny the fact that the respondent was being paid those benefits reflected in those exhibits by the applicant. They argued that the fact that the respondent was being paid those benefits was admitted by BMC's Chief Accountant (DW3).

In determining this issue, it is apposite to reproduce the provisions of section 84(1) as follows:

> *'**84.**–(1) A copy of an entry in a banker's book shall not be received in evidence under this Act unless it is first proved that the book was at the time of the making of the entry one of the ordinary books of the bank and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.'*

Having reproduced the above provisions, I subscribe to the interpretation of the same as made by this Court in **Delina General**

Enterprises Ltd (supra). While I subscribe to that interpretation, I am of the considered opinion that section 84(1) and its interpretation do not apply to the case at hand for the following reasons.

According to section 2 of the Evidence Act, the said legislation does not apply to matters relating to arbitration. The said section provides:

> *'**2**. Except as otherwise provided in any other law, this Act shall apply to judicial proceedings in all courts, other than primary courts, in which evidence is or may be given but shall not apply to affidavits presented to any court or officer not to arbitration proceedings.'*

From the cited section, it is clear that the Evidence Act applies to judicial proceedings that are held in courts and not in arbitration proceedings. According to section 3 of the Evidence Act, court is interpreted to mean persons who are legally allowed to take evidence such as all judges, magistrates, assessors and other persons except arbitrators. The section reads:

> *"court" includes all judges, magistrates and assessors and all persons, except arbitrators, legally authorised to take evidence;'*

The spirit of excluding the application of the Evidence Act in arbitration proceedings is reflected under section 89(4) of the ELRA. According to that section, the arbitrator has the discretion to choose the way of conducting the arbitration with a view to determining the dispute in a fair and timely manner. Further, he is obligated to deal with substantial issues while giving little weight to legal technicalities. The section reads:

> *'(4) The arbitrator*
>
> *(a) may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly; and*
>
> *(b) shall deal with the substantial merits of the dispute with the minimum of legal formalities.'*

Likewise, this spirit is reflected in section 89(5) of the ELRA. While the subsection recognises the discretionary powers of the arbitrator under subsection (4) as being of paramount importance, it nevertheless safeguards the right to a fair hearing by ensuring that parties are afforded an opportunity to adduce evidence, call witnesses, cross-examine witnesses, and submit arguments. The subsection reads:

'(5) Subject to the discretion of the arbitrator as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question witnesses, and present arguments.'

That being the position, in my view, had the legislature intended that the strict rules governing admissibility of evidence before courts should apply with equal force to arbitration proceedings before the CMA, it would have expressly so provided either in the Evidence Act or in the ELRA. I hold this position on the basis of clear statutory interpretation.

Firstly, the Evidence Act itself expressly limits its application to judicial proceedings in courts and excludes arbitration proceedings. This exclusion is not accidental but deliberate, signifying that arbitration is not intended to be governed by the strict technical rules of evidence applicable in judicial proceedings.

Secondly, the ELRA establishes a distinct dispute resolution framework in which arbitration before the CMA is designed to be informal, expeditious and flexible. Consistent with this design, the Act does not import the full evidentiary regime of the courts into arbitration proceedings, but instead allows arbitrators to adopt procedures that are

suitable to the nature of labour disputes, subject only to the broad requirements of fairness and justice.

Given that, the arbitration proceedings under the ELRA are not bound by the strict rules of admissibility of evidence as applied in courts. To hold otherwise would defeat the legislative intent of creating a simplified and accessible dispute resolution mechanism for labour disputes.

Having taken that position, the decision of the CMA to admit the exhibits complained of was justified and necessary in the spirit of arbitration which is not to be subjected to rigorous rules of evidence.

Even assuming, *arguendo*, that the exhibits complained of were improperly admitted, I am satisfied that the respondent's claim remains supported by credible oral evidence on record.

This is due to the fact that the respondent testified, consistently with his pleadings in Form No. 1, as to the remuneration and entitlements he received while serving as Director General. That testimony was not shaken in cross-examination. More importantly, it was materially corroborated by the evidence of DW3, who conceded that the respondent, in that capacity, was paid the remuneration he claimed.

In these circumstances, the evidentiary burden shifted to the applicant to rebut that position by producing the best evidence available, namely payment records, salary slips or other documentary proof within its custody. The applicant, being the employer, was in a peculiarly strong position to produce such evidence. Its failure to do so cannot be taken lightly.

I therefore find it appropriate to draw an adverse inference against the applicant, to the effect that had such documentary evidence been produced, it would have been unfavourable to its case. In that case, even in the absence or exclusion of the impugned exhibits, the respondent's oral evidence, being unchallenged and corroborated by DW3, is sufficient to establish his entitlement on a balance of probabilities.

On the third issue, Mr. Bernard began his submissions by attacking the CMA's position that it failed to analyse and evaluate evidence to the extent of holding that Exh.A1 was valid as it was issued by the Board Chairman who is the member of the applicant. He argued that conclusion was a total misdirection as the applicant and BMC are different entities established under different instruments.

This contention was disputed by Messrs Mutungi and Mhagama. In their views, the CMA was correct in holding Exh.A1 as valid as it relates to Exh.A11 which terminated Exh.A1.

In this aspect, it is apposite to reproduce the last paragraph of page 16 in which Mr. Bernard premised his argument. The paragraph reads:

> *'Nikurudi kwenye hoja ya kwanza ikiwa kuna mkataba halali wa ajira kati ya mlalamikaji na malalamikiwa, majibu yangu ni kwamba ndio kulikuwa na mkataba halali kati ya pande hizi mbili kwenye shauri hili na mkataba huo ni kielelezo A1 na kinaungwa mkono na kielelezo A11 ambacho ni barua ya kuvunjwa kwa mkataba huo. Kwamba kielelzo A1 ni Mkataba wa ajira ambao ulitolewa na mwenyekit wa bodi ya hospitali ya rufaa ya Bugando ambaye ni sehemu au miongoni mwa maaskofu wanao unda Baraza la maaskofu Tanzania . na kwamba hospitali ya rufaa ya Bugando ni moja ya taasisi zinazomilikiwa na mlalamikiwa na kama nilivyosema hapo awali wakati wa utangulizi wa kuandika hukumu hii mlalamikiwa ndiye mwajiri wa mlalamikaji katika nafasi ya ukurugenzi mkuu*

wa hospitali Bugando na kielelezo D2 kilichotolewa na mlalamikiwa kinaeleza hivyo katika kipengele namba 6..'

After reading the above quotation, I associate with Messrs Mutungi's and Mhagama's contention that the CMA held in that paragraph that Exh. A1 was a valid employment agreement as the same was connected to Exh.A11 which terminated it.

Concerning the contention by Mr. Bernard that the CMA misdirected itself in holding that the author of Exhibit A1 acted in his capacity as the Board Chairman and as part of the applicant, and that the Board and the applicant are distinct entities, I am inclined to agree with him.

However, that misdirection does not, in my view, affect the validity of Exh. A1. The evidence on record establishes that the author of Exh. A1 acted pursuant to the authority and instructions of the applicant, as I have already demonstrated in determining the first issue. Therefore, notwithstanding the CMA's misapprehension regarding the institutional distinction between the Board and the applicant, Exh. A1 remains valid and binding upon the applicant. It is for this reason, the applicant's complaints that the Board was supposed to be sued is misplaced as the respondent was appointed and terminated by the applicant.

Mr. Bernard submitted that the CMA wrongly concluded that the applicant terminated the respondent's fixed term contract by relying on the heading of Exh.A11 without due regard to the contents of the said exhibit. He argued that according to the said letter, the applicant revoked the appointment of the respondent as the Director General and did not terminate his employment as it directed the respondent to contact the Human Resource Officer for his new position in the institution. In supporting his contention, the learned Counsel referred to the said letter particularly where it stated:

> *'…….We have to revoke you position as the director general and end your contract with immediate effect from today March 4th, 2025. Please hand over your office to the acting director General.*
>
> *For your new position in the hospital please contact Human resource officer of Bugando Medical Centre.'*

Rebutting, Messrs. Mutungi and Mhagama contended that Exh.A11 is the documentary evidence and the same states itself on the meaning and contents of the said document. They submitted that the said Exhibit clearly states who was the respondent, his tittle and where he was instructed to work by the applicant. They averred that Exhibit A11 shows

the reasons for the respondent's termination, although they were invalid.

With respect to Mr. Bernard, his contention is devoid of merit. As rightly argued by Messrs Mutungi and Mhagama, Exh. A11 speak for itself that the applicant revoked the respondent's position as the Director General. It further stated categorically that it ended his contract with immediate effect from 4th March, 2025. In my view, the phrase ***"end your contract with immediate effect"*** denotes termination of the contract.

With regard to the submission by Mr. Bernard that the respondent was directed to contact the Human Resource Officer with a view to ascertaining his new position within BMC, I am of the considered view that such directive does not detract from the fact that the respondent's fixed-term contract to serve as Director General was prematurely terminated by the applicant.

The invitation to explore a "new position" may suggest the possibility of continued engagement within the institution; however, in my opinion, it does not negate the legal effect of the express decision to revoke the respondent's position and bring his fixed-term contract to an end with immediate effect. In law, the termination of a specific fixed-

term appointment constitutes a complete and actionable termination of that contract, irrespective of any subsequent or parallel administrative arrangements concerning redeployment.

Regarding Mr. Bernard's contention on the admissibility of bank statements, without repeating the arguments by the learned Counsel for both parties, my reasoning when determining the fourth issue suffices to render the complaint baseless.

Mr. Bernard submitted that the respondent's evidence was inadequate for failing to establish the remuneration he earned, which was necessary for the computation of what he would have been entitled to for the unexpired period of his contract following the alleged breach. He further argued that the evidence of DW3 was clear that some of the allowances were not paid consistently, but were dependent on the performance of specific duties. On that basis, he faulted the CMA for awarding the stated amount as what the respondent would have earned had his contract not been terminated by the applicant.

Submitting in rebuttal, Messrs. Mutungi and Mhagama contended that the CMA ordered payment of the allowances and benefits reflected in Exhibits A2 to A10 on the basis that those documents corroborated the employment contract (Exh. A1). They further argued that the award

was made because the CMA was satisfied that the applicant had breached the fixed-term contract with the respondent.

They added that the amounts stated by the respondent, as derived from Exhibits A2 to A10, were correct, as the applicant did not produce any alternative figures to rebut the claimed payments. On that basis, they maintained that the respondent's figures were accurate and that he was entitled to benefit from them.

In determining this aspect, I wish to point out that both the applicant and the respondent, under section 97(1) of the ELRA were under the obligation to keep the records of any remuneration paid to the employee, in this case, the respondent.

From the records, the respondent tendered the bank statements to establish his claims regarding the amount he was paid as remuneration. He further gave oral evidence in support of his claims. That being the case, it is my considered view that had the applicant have different figures, he would have come up with its record to rebut the respondent's claims. Since it failed to do that, my hand are tied up to interfere with the CMA's findings.

In the final analysis, I find the application devoid of merit. I dismiss it. Order accordingly.

Right of Appeal Explained.

DATED at **MWANZA** this 27th April, 2026.



KS KAMANA

JUDGE