IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 326 OF 2015

BETWEEN

TANZANIA CIGARETTE COMPANY LIMITED..... APPLICANT

VERSUS

ELIZABETH KIPUYO..... RESPONDENT

(ORIGINAL/CMA/DSM/TEM/153/2013)

JUDGMENT

30/09/2016 & 28/10/2016

Mipawa, J.

The applicant in this revision namely Tanzania Cigarette Company Limited styled "*TCC Ltd.*" was aggrieved by the decision or award of the CMA[1][thereinafter to Commission] in trade dispute with Ref. CMA/DSM/TEM/153/2013[2].

The revision against the award or decision of the Commission has been ruled under the provisions of the Labour Court Rule[3] and the Employment and Labour Relations Act[4].

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[1] CMA refers to the Commission for Mediation and Arbitration established under S. 12 of the Labour Institution No. 7/2004

[2] Per Faraja Arbitrator on 1st October, 2014

[3] Labour Court Rules GN. No. 106 of 2007

[4] Act No 6 of 2004 R.E. 2009 Cap 366 of the law

The Revision was also flavored by the Chamber Summons supported by an Affidavit of the Goodluck Kazarra.

The gist of the matter before the Commission is that, the Respondent Elizabeth Kipuyo was employed by the Applicant TCC Ltd since January, 2007 up to 20th April, 2013 when she was terminated by the applicant[5]. The Termination of Employment caught the Respondent who was receiving a salary of 1,584,171.00 per month as a supplies assistant. The Respondent had her employment terminated because she was caught stealing four (4) packets of cigarette from the Applicant[6].

Following that theft the Respondent loit fact in her the termination letter which was laid on the Respondent's bed, [Complainant in the CMA] read:-

> *...In the exercise of its right conferred to it by the employment contract between you and the Company, and subsequently to the Disciplinary hearing held in Dar Es Salaam on 14th March 2013 and its outline in Chairperson's ruling and later Management's appeal to Senior Management level we hereby terminate your employment contract with Tanzania Cigarette Company Ltd will effect from 30th April, 2013 and account of gross misconduct - Theft and gross dishonest[7]...*

[5] TCC Termination of Employment Contract letter to the Respondent Elizabeth Kipuyo dated 30th April 2013 Ex. 8
[6] Termination was on account of gross misconduct, Theft and Gross dishonest- see termination letter
[7] *op. cit.* note 5

The witnesses who testified before the CMA in favour of the employer applicant was Mariam Mohamed Hussein a Security Guard at the exit door from the Company's premises. The Respondent on 03/03/2013 left the Company's premises back home possibly after work, at the exit gate she found DW1 Security Guard on duty who in turn wanted to search the Respondent [Complainant in the Commission]. However according to DW1 Mariam Mohamed Hussein the Respondent declared four packets of cigarettes before he was searched by DW1. The Respondent disclosed to the Security Guard that she had carried four packets of cigarettes just for personal use during the weekend.

Nevertheless despite the respondent's pledge that he took the four packets of cigarettes just for personal use during the weekend, DW1 could not allow her to exit with cigarettes because she failed to show any authorization document allowing her to exit with the four packets of cigarettes. Hence the Security Guard DW1 phoned to her supervisor and reported the incident to DW2 Hassan Msangi and DW3 Masoud Matonge.

The Respondent was interrogated by DW2 over the matter and failed to satisfy him that she wanted to exist with the four packets of cigarettes just for personal use during the weekend. The Respondent's contention that she did not have intention of stealing the packets of cigarettes because the same was just for her personal use during the weekend together with her friends and that is why at the exit gate she disclosed that she had carried with her four packets of cigarette before the Security Guard had searched her. DW3 on his part told the commission that the

Respondent was aware of the existence of the Code of Conduct and Ethics of the Company (exhibit DW3A) that the Respondent was handled with the same by time of her employment and duly signed the Code of Conduct and Ethics with her consent not to violate it.

The Code of Conduct and Ethics of the Company prohibited any employee to take properties or products of the company without the consent of the employer and being honest while in office. The breach of the code subjected the Respondent to a Disciplinary Hearing Committee where she was heard and confessed her misconduct as per the charge sheet leveled against her. *The Respondent was terminated allegedly for giving weak defense, despite that fact that the Disciplinary Hearing Committee had recommended that the Respondent employee be given a written warning because that was her first misconduct.* The company applicant was aggrieved by the Disciplinary Hearing Committee decision and appealed because the Respondent was given a light punishment by the Disciplinary Committee.

The Respondent's story in the Commission was simply that she did not intend to steel the four packets of cigarettes she had carried from the office and wanted to go with the cigarettes just for personal use with her friends at the weekend, that is why she disclosed at the exit gate that she was carrying four packets of cigarette which she declared before the Security Guards and prayed to them to allow her exit with the same. However the disclosure of the cigarettes at the gate was taken negatively

by the Security Guards and therefore accused of theft and phoned to the authorities.

According to the Respondent who was PW1 in the Commission, she was charged before the Disciplinary Hearing Committee where she defended herself well as above, to the effect that the Disciplinary Hearing Committee ruled that instead of termination she should be served with **severe written warning letter** as seen in exhibit PW1E due to reasons stated in exhibit PW1G that she had a good record from Human Resources Department and the company's prosecutor failed to prove the allegation drawn against her. Later when she was on leave, the Applicant informed her that the appeal by Applicant Company against the ruling of the Disciplinary Hearing Committee was successful and she was served with a termination letter therefore.

In the Commission the learned Arbitrator found that the Applicant employer failed to prove the charge of theft and dishonest against the Respondent employee. The Learned Arbitrator ruled that:-

> *... it is undeniable facts to that principle to be honest by disclosing the said packets before the security staffs thereto... before being searched pray for them (sic) to allow her exit with, just for personal use despite the facts that she had no official documents to allow her to do so simply because the supervisor mandated to allow her officially was absent ...PW1 was honest firstly to*

disclose what she took from Respondent and the reasons of doing...[8]

The whole charge sheet leveled against PW1 plus its termination letter lacked legal basis to stand against the Respondent employee, and the CMA quashed and set aside the employer's decision and the learned Arbitrator substituted thereof the offence of **Violation of Respondent Code of Conduct** the Commission therefore held that termination was substantively fair and blessed the sanction of the employer for terminating the applicant - employee- on the following reason.

...I find it right to concede with Respondent against PW1 just for wise reasoning of protecting its business and shaping the behaviour of the rest left staffs thereto, simply because by not punishing PW1 accordingly would create precedent in favour of the rest staffs to be treated the same when committing the similar or likely misconducts meanwhile the Respondent business stay at risk...[9]

The Learned Arbitrator further added that the argument made him to concede it just as it's the basis of holding that the substantive issue above proved well against PW1 as in the final analysis remarked that:-

... This Commission find it right to order Respondent to pay PW1 herein half of statutory requirements as if I would had held that here termination was unfair both substantively and procedurally i.e out of twelve

[8] CMA award at P. 9-10
[9] CMA Arbitrator award *op.cit*

statutory required payment, complainant should be paid six monthly salary only by Respondent to the tune of her last monthly salary mentioned herein, that all together when calculate (sic) make the tune[10] *of 9,505,026.00 Tzs only...*

The Commission on substantive fairness therefore hold as described above that it was fair. On procedural fairness the learned Arbitrator found that the employer did not follow the procedure because:-

...client was not given the chances to challenge the appeal lodged against her, and that means she was condemned unheard in the said appeal contrary to the principle of nature justice[11]*...*

It was the above decision which sparked the applicant's desire to file a revision in this court giving four grounds of revision ***videlis*** (that):-

(i) The Commission having clearly ruled that a total admission by the Respondent that she was aware of the company's policy on the protection of company's properties and her contract of employment being containing the clause of that effect, it was an error for the Commission to hold that the employee's honesty of full disclosing the stolen cigarette automatically freed the said complaint, the Respondent herein from theft [12].

[10] CMA Arbitration award *op.cit*
[11] *ibid*
[12] Applicant's Written Submission

(ii)Upon holding that the Respondent was substantively fairly terminated it was wrong in both law and fact for the Commission to order the payment to the Respondent, the six months' salary by misinterpreting Rule 32 (5) of the Labour Institutions (Mediation and Arbitration guidelines)[13].

(iii)The third ground of revision is couched in the following words "the Honourable Arbitrator erred in law and fact by holding that there was no proper notice to Respondent regarding the appeal to the chairman while the actual fact the notice and grounds of appeal were served to the Respondent"[14].

(iv) The Honourable Arbitrator erred in law and fact by substituting the cause of action featured in the Respondent's CMA F-1 Form that of organizational right to that of misconduct[15].

I will determine the grounds of revision seriatim following the applicant's trend on the flow of the grounds of revision.

In ground number one the applicant has submitted that, the law require that any person authorized to decide whether termination for misconduct is unfair or not to take into account whether the employee contravened a rule regulating conduct of employment. Rule 12 of the

[13] *ibid*
[14] *ibid*
[15] *ibid*

Employment and Labour Relations [Code of Good Practice 2007][16] provide as follows:-

> *...Any employer, Arbitrator or Judge who is required to decide as to termination for misconduct is unfair shall consider...*
>
> *(a) Whether or not the employee contravened a rule of standard regulating conduct for employment;*
>
> *(b) If the rule or standard was contravened whether or not:-*
>
> *(i) It is reasonable;*
>
> *(ii) It is clear and unambiguous*
>
> *(iii) The employee was aware of it could reasonably be expected to have been aware of it;*
>
> *(iv) It has been consistently applied by the employer and*
>
> *(v) Termination is appropriate sanction for contravening it [the rule]*
>
> *(c)* ***Whether or not the employee contravened a rule or standard regulating conduct to employment***[17]*...*

The rule which the employee breached as found by the learned Arbitrator existed in the code of conduct of the applicant employer. The

[16] GN No. 42/2007
[17] *op. cit Note 16*

rule reads as follows:-

> *...company property must not be removed from company premises without prior written approval...*

There was a naked truth as found by the Commission that the employee Respondent did took 4 packets of cigarettes the property of the company, from where she took for personal use with her friends during the weekend. She took without the prior permission from her supervisor who according to the Respondent was present at the material place and time. She declared the 4 packets of cigarette at the gate before she was searched by the Security Guards who did not believe her story that she had waited for an approval of getting away with the 4 packets of cigarettes at no avail.

It is trite law in labour matters that the employer has to prove the employee's contravention of the rule on the balance of probabilities, which is the standard required in civil matters. In the instant case the employer had proved the contravention of the rule or standard mentioned above, as rightly found by the learned Arbitrator. In addition the employee Respondent herself had confessed the contravention of the rule. The position in the instant case is distinguishable from the position in the case cited by the Applicant Vis: **NBC Mwanza V. Justa Kyaruzi**[18] in which it was held that:-

> *... the nature of banking business requires absolute honest in handling money, the behaviour like admitted*

[18] Rev. No. 79/2009 HCLD at Mwanza, per Rweyemamu, J (unreported)

*by **Justa** cannot be condoned by any serious employer in such business and it does amount to gross dishonestly ... a misconduct grave enough to justify termination under Section 37 (b) (i) of the Act read together with rule 12 (3) of the code*[19]*...*

The rule and kind of business in the NBC case above and the instant case were very different and are distinguishable, whereas the NBC case dealt with Banking business involving handling of money transaction in TCC case it involved ***tobaccum*** [tobacco] and the rule that the Respondent breached was:-

... company property must not be removed from company premises without prior written approval[20]*...*

A cursory glance on the above rule, it seems to me that the rule which the Respondent **contravened** (see above) in itself does not have any ***directo*** element or smell of theft. I take judicial notice that one cannot declare at the security gate that she had taken four (4) packets [removed somewhere in the company premise] for weekend use with friends and be labeled to have committed "*theft*". It appears to me that taking cigarette for smoking fall under the above rule, except that the same must be condoned by the supervisor by written approval. **Regard must also be had** on the small quantity of cigarette meant for use with friends [smoking] during the weekend. The employer as correctly found by the Arbitrator had failed on the balance of probabilities that the

[19] Employer's Code of Good Conduct
[20] *ibid*

Respondent employee had any element of "*stealing*" the 4 packets of cigarettes.

Nevertheless even if the Respondent employee could have committed a serious offence, it is trite law that, **serious offences does not automatically warrant the employees dismissal or termination par excellence.** It has been held in some jurisdiction [Tanzania not an exception] the position I entirely and respectfully agree that:

> *...dismissal should not be a "knee-Jerk response" to all serious offences. There may be circumstances which have tempering effect, not on the circumstances of the offence as such, but on the severity of the penalty*[21]*...*
> *[see* ***Toyota SA Manufacturing (Pty) Ltd. V. Radebe and Others [1998] 19 ILJ 1614(LC)****].*

Further "*a serious offence is not* "***a magic wand***" *which when raised always renders dismissal of an employee*" to borrow the words of one distinguished Justice of Appeal of South Africa.

In view of the above case of **Toyota SA. V. Radebe** although theft is a serious offence, the object which has been stolen may be of such little value that **dismissal may be too harsh a penalty**. Severe warning in written form could have been fair in the circumstance of the case instead of termination or dismissal.

(a) If the rule was contravened whether or not

(i) It is reasonable.

[21] As quoted by Professor Basson et al in her book titled in Essential Labour law 3rd Ed. 2002 Houghtown South Africa at p....

(ii) *It is clear and unambiguous*

(iii) *The employee was aware of it or could reasonably be expected to have been aware of it*

(iv) *It has been consistently applied by the employer and*

(v) *Termination is appropriate sanction for contravening it [if rule or standard]*

An important sign or ***Indicia*** [indication] that a certain rule is reasonable is [that] its inclusion in the code of conduct of the employer [i.e Disciplinary Code] in the case at hand the record clearly shows that there is a rule in the code of conduct of the employer which prohibit;

> *...company property...be removed from the company premises without prior written approval ...[company property must not be removed from company premises without prior approval]*[22]*...*

Furthermore a rule or standard regulating the conduct of employees will be reasonable if it is not arbitrary, capricious or unfair as correctly pointed out by Professor Tammy Cohen of the University of Kwazulu

[22] Employer Code of Good Conduct

Natal[23]:-

> ***...If the rule was contravened whether or not.***
>
> *(ii)* ***it is clear and unambiguous.***
>
> *(iii) If the rule was contravened whether or not the employee was aware or could reasonably be expected to have been aware of the rule [24]...*

In clear reading of the rule itself, it goes without saying that the rule as enshrined in the code of conduct of the employer is by and large unambiguous.

As regards to the awareness of the employee on the rule or standard regulating conduct of the employee, it is important that the employee must have known or could reasonably be expected to have been aware of the rule because it serves as an important guideline for a substantively fair termination.

I respect the words of Professor Marylyn Christianson which I entirely agree and subscribe to the position in his article "**unfair dismissal**" in **Professor Basson et. al [25] Essential Labour Law 2002 3rd ed**[26] the learned author stated that:-

> *... the rationale for the guideline is obvious, the employee should only be penalized for actions or omission which the employee knew [at the time] were unacceptable...*

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[23] See Prof. Dutoit et. Al Labour Relations Law: A comprehensive GUIDE 2015 Sixth Edition Durban
[24] Code of Good Practice Rules op.cit note 16
[25] Prof. Basson is a Professor in the Department of Mercantile Law University of South Africa
[26] Labour Law Publications, HOUGHTON 2041 South Africa

The record clearly shows in this case that the employee Respondent was aware of the rule and indeed he knew it, as rightly pointed out by the learned Arbitrator, the Applicant and even the Respondent herself. Apart from the rule being in the code of conduct and known to employees, knowledge of the rule or standard may be known by employee through other means apart from being enshrined in the code. Professor Christianson mentions few thus:-

> *... knowledge of a rule may also be ensured through meetings with workers, written briefs notices on notice boards and through induction programmes for new employees ...not all rules must be brought to the attention of employees in one of the forms mentioned above... certain forms of misconduct may be so well known in work place that notification is unnecessary. The most important examples of such misconduct are those that have their origin in the common law, theft, assault, intimidation, insolence and insubordination*[27]*...*

WHETHER OR NOT THE RULE HAS BEEN CONSISTENTLY APPLIED BY THE EMPLOYER

Under rule 12 (i) (b) (iv) (of the Code of Good Practice GN. 42/2007) on consistency of the employer in meeting discipline or penalty an employer's decision to dismiss or terminate must be consistent with the past practice [historical consistency] and also with the treatment of other

[27] Prof. Basson et.al. op.cit note 25

employees who participated in the same misconduct [contemporaneous consistency] [28].

In the case at hand there is no evidence in record which shows that in the register of the employer some employees in the past who contravened the rule and in same circumstances as the Respondent employee were dismissed by the applicant employer, or were given a written warning [historical consistency][29].

We are not even told in the record that the employees who contravened the rule contemporaneously and at roughly the same time are or were not all disciplined. [Contemporaneous consistency] However an employer may inconsistently met discipline to employees and the inconsistency cannot be taken to be unfair for the following reasons, to borrow the wisdom of Professor Christianson that:-

> *...the unfairness in the proposition that similar cases should be treated similarly. If the employer does not do this, the inference may be drawn that the employer administers discipline in an arbitrary or discriminatory way ...However inconsistency will not always be unfair. The employer may be able to justify inconsistency, through factors such as employees different circumstances [such as their length of service their disciplinary record and their personal circumstances]...*

[28] *op.cit* note 25
[29] *ibid*

Now in view of the above and regard being had to the record on the case at hand, though there is no evidence and record of the inconsistency (historical or contemporaneous) in meting discipline in the applicant's work place, suffice it to say here that the employee's circumstances, such as length of service and clean disciplinary record, the employee's respondent's circumstances as seen and noted by the commission, could have attracted not termination but a severe written warning penalty in lieu of termination. The commission correctly noted that:-

> *... since its undeniable fact that PW1 herein had clear record in office before its (sic) termination as testified herein from Respondent Human Resources Department, she was in her first misconduct ...her length of service thereto...*

The last point I will determine now under rule 12 of the Code of Good Practice is; **whether termination of the Respondent was appropriate sanction for contravening it [the rule]**.

Now when the employer had concluded and reached to a decision that the employee's breach of a rule of conduct justifies termination, the question for the Arbitrator or the Court to ask itself is *whether dismissal or termination was an appropriate sanction for the contravention of the rule or standard.* The determination of an appropriate sanction is now, no longer based on the employer's discretion. It is the duty of the Arbitrator or the Court to determine the appropriate sanction, this position was also reached by the Constitution Court of South Africa [being the highest court]

in the case of **Sidumo V. Rustenburg Platinum Mines Ltd**[30] **(2007) 12 BLLR 1097 (CC) at P. 61 in which the court held, overruling the previous case of Nampark Corrugated Wade Ville V. Khoza** [31][1999] of the Labour Appeal Court of South Africa which set the principle that the decision to dismiss or take disciplinary action is largely within the discretion of the employer; "*or a reasonable employer's test*"; the appellate court had held in Nampak Corrugated case that:-

> *...A Court should therefore, not lightly interfere with the sanction imposed by the employer unless the employer acted unfairly. The question is not whether the Court would have imposed the sanction imposed by the employer, but whether in the circumstances of the case the sanction was reasonable*[32]*...*

The Constitution Court of South Africa overruling the reasonable employer's test as set by the Labour Appeal Court in **Nampak Corrugated** case above held as follows in **Sidumo** case above, thus,

> ***...there is nothing in the constitutional and statutory scheme*** *that suggest that,* ***in determining the fairness of a dismissal, a commissioner must approach the matter from the perspective of the employer.*** *All the indication are to the contrary. A plain reading of all the relevant provisions compels the*

[30] See Prof. Du Toit et.al Labour Relation Law. A Comprehensive Guide 6th ed. 2015 *op.cit*
[31] *ibid*
[32] *ibid*

conclusion that the commissioner is to determine the dismissal dispute as an impartial adjudicator...[33]

Now basing on the above authority which is highly persuasive, the arbitrator or the court before deciding whether the sanction of termination is an appropriate one should consider the following factors; namely;

Factor 1. ***The gravity of the misconduct***

The seriousness of the misconduct is an appropriate factor when the appropriateness of dismissal as sanction is considered.

Factor 2. ***The circumstances of the infringement itself***

A serious offence does not automatically warrant the employee's dismissal.

On the above factor i.e the circumstances of the infringement itself, and by looking carefully the circumstances in which the employee Respondent in the instant case infringed the rule of the company, given the factors above termination was not appropriate, it has further been held that:-

...dismissal should not be a "knee-Jerk response" to all serious offences. There may be circumstances which have a tempering effect not on the seriousness of the offence as such, but on the severity of the penalty[34] *[see* ***Toyota SA Manufacturing [Pty] Ltd. Radebe and others***[35]*...*

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[33] *ibid*
[34] *ibid*
[35] *ibid*

Another factor the arbitrator or court has to consider in determining the appropriateness of termination or dismissal as a sanction are

Factor 3: The nature of the employee's job

Factor 4: The employee's circumstances

Factor 5: Other employees have been dismissed for the same offence

The circumstances of the employee must be taken into account by the employer when considering dismissal or termination, these include the **employee's length of service, status within the undertaking, previous disciplinary record and personal circumstances such as employee's marital status, the number of dependents and the employees age**.

Taking into account on the foregone it was not proper for the learned Arbitrator to "*bless*" the sanction of termination imposed by the employer upon the Respondent after finding that the employee had contravened the rule or standard of the applicant's company.

I take judicial notice that had the arbitrator considered all relevant facts he could have by and large agreed with the applicant's Disciplinary Hearing Committee where it was of the view that the employee Respondent in this revision should be given a severe written warning for contravening the rule or standard in lieu of the sanction of termination. I entirely and respectfully share the same view with the applicant's employer's Disciplinary Hearing Committee for taking that avenue after considering all relevant facts before dealing whether or not the sanction of

termination was an appropriate in the circumstances. I think the Arbitrator could have followed the same trekking so to speak. The arbitrator who heard the evidence and witnessed the exhibits which concluded at the end that the complaint or dispute filed by respondent was that of misconduct rather than organization rights was correct to reflect the same as he did for the sake of social justice to prevail. Ground four also fails because "*social justice is something more than mere justice*", to borrow the wisdom of Professor Surya Narayan Misra in his book titled **Introduction to labour and Industrial Laws** 14th edition (1994). And further by the words of Ellen Baldry and Ruth Maccaustand in their unpublished paper 2008 titled "***Social Justice in development***" which I subscribe, also the learned authors stated that "*the words or at least concepts of social justice are used in context where people understand social justice to be above fairness beyond individual justice*" social justice is also the principal object of the Employment and Labour Relations Act No. 6 of 2004.

I therefore proceed to hold that, though the employee Respondent had contravened the rule or standard regulating the conduct of employment in the company, the sanction of termination was extremely excessive in the circumstances and a severe written warning could have been appropriate, regard being had the factors considered in this judgment above.

It follows therefore that the termination of the Respondent employee was substantively unfair, there was no valid reason to terminate the Respondent employee. The contravention of the rule or standard by the

employee Respondent could have been sanctioned only by a severe written warning to the employee Respondent as correctly advised by the Applicant employer's chairman of the Disciplinary Hearing Committee which heard the parties.

I revise and quash the award of the Commission for "*blessing*" the termination of the employee Respondent and set aside the order of payment of six month salary to be paid to the employee by the employer, and substitute thereof for twelve (12) months' salary compensation of the employee by the employer for unfair termination. The employee has the right to be compensated for the unfair termination in spite of the reinstatement.

The Applicant employer is hereby ordered to reinstate the Respondent employee back to work without loss of remuneration from the date of unfair termination to the date of reinstatement, and be compensated as stated above, the words "*or*" ... under Section 40 of the Employment and Labour Relations Act No. 6 of 2004 should be interpreted **conjunctively** and not disjunctively. To interperete disjunctively may remove or take away the right of a compensation to an employee, who is entitled. Interpreting **conjunctively** an arbitrator or Court may order both reinstatement and compensation in some cases where compensation is the right of the employee and which cannot be deprived from him by interpreting section 40 (1) (c) of the Employment and Labour Relations Act, disjunctively by either granting reinstatement or compensation but not both. Interpreting section 40 (1) (c) **conjunctively** an employee can get

his right for compensation and reinstatement both of them. The wisdom of the parliament did not mean to deprive the employee his right for compensation upon being reinstated back to work simply by interpreting the words "*or*" in section 40 (1) (c) of the Employment and Labour Relations Act disjunctively.

In cementing my holding above sufficient it to borrow the wisdom of Professor Du Toit et al in his book titled Labour Relations Law: A Comprehensive Guide [2000] 3rd edition when the learned author was considering the word "*or*" in section 46 (9) (c) of the Labour Relations Act of South Africa 1995 (which is in ***parimateria*** with section 40 (1) (c) of the Employment and Labour Relations Act 2004 Tanzania, he wrote that:-

> *...The word "or" should not be taken as indicative of an intention to exclude additional compensation where appropriate...*

The Labour Appeal Court of South Africa also in the case of **Almalgamated Beverages Industries (Pty) V. Janker** [1993] when interpreting section 46 (9) (c) of the Labour Relations Act of South Africa [1995] which is in ***parimateria*** with section 40 (1) (c) of the Employment and Labour Relations Act 2004 (Tanzania) held that:-

> *...Section 46 (9) (c) [of the Labour Relations Act) should be read conjunctively and not disjunctively, in other words the Court may order reinstatement and compensation...*

In the event and on the foregone the revision application is dismissed to the extent stated supra in this Judgment.

The present revision by the employer applicant is dismissed for lack of merit, the Commission (CMA) award is quashed and set aside. The employer applicant is ordered to reinstate back to work the employee respondent without loss of remuneration from the date of unfair termination to the date of reinstatement and the employer further to pay a compensation of twelve months (12) salary compensation for unfair termination, within one month from the date he is served with this Judgment.

I.S. Mipawa
JUDGE
28/10/2016

Appearance:-

1. Applicant : Enidy Erasmus, Advocate
2. Respondent: Godfrey Filey, Advocate - Present

Court: Judgment is read in the presence of both parties as per the appearance above.

I.S. Mipawa
JUDGE
28/10/2016