

IN THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT MWANZA

LABOUR REVISION NO. 19 OF 2020

(Original CMA/MZ/NYAM/302/2019/126/2019)

JOHN MAGERE.....APPLICANT

VERSUS

NATIONAL BANK OF COMMERCE LTD.....RESPONDENT

RULING

05 & 30/10/2020

RUMANYIKA, J.:

Following award the Commission for Mediation and Arbitration for Mwanza (the CMA) dated 31/01/2020, the application comes at the instance of John Magere (the applicant) supported by his affidavit whose contents essentially he adopted during the hearing. From TUICO Mr. Robert Alex Kimatare represented the applicant; Ms. Marina Mashimba learned counsel appeared for the National Bank of Commerce (the respondent).

Mr. Robert Alex Kimatare submitted; **(i)** that contrary to the respondent's policy and under provisions of Section 7 (1) Disciplinary, Capability and Grievance Standard and Item iv of GN. No. 42 of 2007, if

constituted good and sufficient reason for the dismissal. Whether or not the applicant suffered from top-down set goals and it is for that reasons that he underperformed therefore the breach of contract of service it is immaterial in my considered opinion. As Mr. Robert Alex Kimatare put it, the terms of contract may have been both unfair and unrealistic yes, but it is cardinal law that once it was concluded and executed by them, strictly parties to the contract were bound by the terms and conditions.

With regard to procedure used by the respondents it needs not to detain me much as the charges of poor performance (Rules 17 and 18 of GN No. 42/2007) were earlier on laid at his door, upon confessing he was warned and given time to improve (Exhibit "D6"), he was fairly summoned and he appeared before the committee (Exhibit "D4") and was sufficiently heard then finally terminated (Exhibit "D11") suffice the above stated reasons the issue of unfair termination therefore it should not have raised.

Whether or not according to policy instead of three times the respondents had warned the applicant only once it is immaterial in my considered opinion much as with all intents and purposes the three times warning rule it was not intended to serve as sword but simply as a shield.

The application falls short of merits. It is dismissed.



S. M. RUMANYIKA

JUDGE

25/10/2020

The ruling is delivered under my hand and seal of the court in chambers this 30/10/2020 in the presence of the applicant in person and Miss. Marina Mashimba learned counsel for the respondent.



F. H. MAHIMBALI
DEPUTY REGISTRAR
30/10/2020