**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(LABOUR DIVISION)**

**AT MBEYA**

**REVISION NO. 21 OF 2017**

(Originating from the Complaint Ref. CMA/MBY/144/2014 of the Commission for Mediation and Arbitration for Mbeya at Mbeya)

**OFF ROUTE TECHNOLOGIES.....APPLICANT**

**VERSUS**

**DANIEL YESAYA MWAIBINDI..... RESPONDENT**

**JUDGEMENT**

Date of Last Order: 06/12/2019
Date of Judgment: 06/03/2020

**MONGELLA, J.**

The Applicant herein is seeking for this Court to revise the Award of the Commission for Mediation and Arbitration (CMA) in Complaint No. CMA/MBY/144/2014 filed by the Respondent. The Respondent claimed in the CMA a total of T.shs. 46,240,000/- for unlawful termination of his employment contract. He as well claimed to be re-instated and fully paid. In the end the CMA awarded the Respondent T.shs. 25,800,000/- which included: T.shs. 600,000/- as notice pay; T.shs. 7,200,000/- as twelve months' salaries compensation for unlawful termination; T.shs. 7,200,000/- as salary pay from 27th October 2014, the date of termination to 08th

September 2015, the date of the award; T.shs. 3,000,000/- as rental allowance; T.shs. 1,200,000/- as communication allowance; T.shs. 3,600,000/- as responsibility allowance; and T.shs. 3,000,000/- as general damages.

Aggrieved by this decision, the Appellant through the legal services of Mr. Meswin Masinga, learned Advocate sought the award to be revised on four issues to wit:

1. *Whether the arbitrator correctly ruled out that the termination was unfair in terms of procedure and substance;*

2. *Whether the arbitrator correctly analysed the evidence on record;*

3. *Whether the arbitrator may grant relief not sought in the referral form; and*

4. *Whether the arbitrator may grant relief without the complainant proving the same.*

Mr. Masinga argued on issue one and two collectively. He contended that the Hon. Arbitrator erred for failure to properly analyse the evidence. Specifically, he referred to page 3 and 4 of the CMA Award whereby the Hon. Arbitrator stated:

> *"Concerning the issue of reason I found that the employer had no valid reason to terminate the Complainant...the employer failed to prove that the employee absconded from work for*

*more than five days. No evidence shows that when the employee stopped to go to working with his employer."*

From the above quotation, Mr. Masinga argued that during the hearing in the CMA witness No. 1 one Ernest Albert Mbaga testified that there was gross misconduct by the Respondent for allowing some Applicant's trucks to go outside the country without the authorisation of the Applicant, the employer. He added that this witness also testified that the Respondent was supposed to report at site on 20/10/2014 but he failed to report. Thus the Arbitrator erred when he held that there is no evidence as to when the Respondent stopped going to work. That the Respondent did not cross examine on the evidence given something which connotes admission. He added that the issue of authorizing trucks to go to Rwanda without authorisation of the employer was testified by other witnesses, one Frank Peter, Joshua Poland, and Jackson Michael. He contended that despite this misconduct, the employer did not terminate the Respondent but decided to change his post from that of transport officer to that of loading foreman. It was from this change of position the Respondent failed to report to Matuli-Kyela and decided to abscond from work for more than five days. Mr. Masinga argued further that the Respondent also testified that the trucks went to Rwanda and he was in charge. That the Respondent also agreed to have been given a letter to report to Matuli-Kyela as a loading foreman.

Mr. Masinga further argued that absconding from work is a clear insubordination which is misconduct covered under Regulation 12 (3) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007. Specifically, he referred to Regulation 12 (3) (f)

covering issues of gross insubordination. He argued that the employee had absconded from work which amounts to willful resignation. He quoted Regulation 13 (1) of G.N. 42 of 2007 which provides that "*the employer shall conduct an investigation to ascertain whether there are grounds for a hearing to be held*" and that having this provision in mind it was impracticable for a disciplinary hearing to be conducted where an employee has absconded from work. He added that, as testified by witness no. II the office declared that, he terminated himself by absenteeism. He thus concluded that the Arbitrator erred in holding that there was no reason for termination and that the procedures were not followed. He invited the Court therefore to re-evaluate the evidence since the CMA failed to do so. In support thereof he cited the case of ***Bushangilang'oga v. Manyanda Manyanda Maige*** [2002] TLR 335; ***TREVOR Prince and Another v. Raymond Kelsall*** [1957] EA 752; and that of ***Joseph Loyaman & Another v. Melekizedek Michael*** [1997] TLR 192.

Responding to Mr. Masinga's arguments, Mr. Samson Suwi, learned Advocate for the Respondent contended that under the labour laws the employer has a duty to prove that termination was fair. He said that the employer in the case at hand relied on absence from work as a reason for terminating the Respondent. However, the employer failed to prove that the Respondent absconded form work because he failed to produce records in the CMA, particularly the attendance register. He referred to section 15 (5) and (6) of the ELRA which charges upon the employer the duty to keep records and the same shall be used in proceedings of unfair termination to ascertain as to whether the termination was unfair in accordance with section 39 of the ELRA.

He as well cited the case of ***Director PTOTRANS Ltd. v. Daud Mohamed & Another*** [2011-2012] LCCD 2 in which the Court *inter alia* ruled that failure by the employer to keep records and to tender them before the Court when required to do so justifies the court to trust and take into consideration and give weight to the employee's claim. He argued that the Arbitrator was justified to decide in favour of the Respondent/employee because the Applicant failed to prove that the Respondent absconded for five days consecutively. He also cited the case of ***National Microfinance Bank Ltd (NMB) v. Neema Akeyo***, Revision No. 35 of 2017 (HC Lab. Div. at Arusha, unreported) in which the Court insisted that when termination is based on the reason of absenteeism the employer must prove the existence of absenteeism by tendering attendance register.

In rejoinder, Mr. Masinga argued that it is not in every case that proof of absenteeism must be provided by providing an attendance register and thus every case has to be decided on its own merits. He said that in the case at hand there is overwhelming evidence from the Respondent himself that he was not at work. He quoted the Respondent's evidence at page 10 of the CMA proceedings whereby he testified that:

> *"On the 20th October 2014 I reported to Mbeya office and replied that letter of transfer to transfer to Kyela. Mr. Smith told me that they will reply back the letter after HR comes back from holiday. While I was waiting that reply I found that I was given termination letter."*

He reiterated what he stated in his submission in chief that this is a clear admission that he did not attend at work and thus no supporting

evidence is needed. He challenged the case of ***Director Ptotrans Ltd.*** (supra) arguing that the same does not apply in the case at hand as it dealt with the issue of proof of payment which is not an issue in the case at hand. He as well distinguished the case of ***National Microfinance Bank Ltd (NMB)*** (supra) arguing that the said case did not rule that in every circumstance an attendance register should be tendered in evidence.

Mr. Masinga also pointed out that the Respondent's counsel has invented new facts which were not presented at the CMA, these include the fact that the Respondent continued to work at Mbeya while waiting for the response regarding his letter and thus the Applicant failed to prove that he absconded from work. That, the transfer to Mbeya was like a punishment and that it created an environment for him to leave work due to difficult working condition/constructive termination. He argued that Respondent's counsel in fact submitted evidence from the bar which is not acceptable. To this effect he cited the case of ***Dhawabu Hamisi Chitenje v. Mtindi Rajabu Mtindi and 2 Others***, Miscellaneous Land Application No. 763 of 2017 (unreported) in which it was held:

> *"Parties are bound by their own pleadings...it is trite law that, submissions are not evidence and the evidence cannot come from the bar. Submissions are generally meant to reflect the general features of a party's case. They are the elaborations or explanations on evidence already submitted and tendered in court..."*

He prayed for the Court to disregard such submission from the Respondent's counsel. (However, after going through the record, I find that with the exception of the allegation of constructive termination,

which shall be disregarded by this Court, the rest of the averments by Mr. Suwi are reflected in the CMA record and thus not invention of new facts as claimed by Mr. Masinga).

He further rejoined on the issue of unilateral transfer raised by Mr. Suwi in his submission to the effect that the Respondent was not consulted before the transfer to Matuli Kyela. He reiterated his position that every case has to be decided on its own merits. He argued that the Respondent was accused of gross misconduct for allowing the Applicant's trucks to go to Rwanda without the knowledge and authorisation of the Applicant. He said under the circumstances, it was impractical for the employer to then consult the employee for him to transfer to another work station. He distinguished the case of ***Naftal Nyangi Nyakibari*** (supra) contending that in this case there was no prior misconduct.

On the 2nd ground, Mr. Suwi argued that the Respondent wrote a letter refusing the offer of unilateral change of particulars of employment and place of work on 20/10/2014. He argued that the Respondent gave his employer the said letter on 20/10/2014 and was told to go home and wait for response from the HR who was in Kyela. However, he was instead issued a termination letter summarily dismissing him. He added that the Applicant in his opening statement stated to have received the Respondent's letter refusing the offer on 26/10/2014, but the records show that the Respondent served that letter on 20/10/2014 while he was at job. He said that the Applicant's allegation that he received the letter on 26/10/2014 is just a technique to avoid that he received the said letter early and told the Respondent to go and wait for response while

premeditating to buy time to terminate the Respondent. He concluded that there was no reason to terminate the Respondent and the Applicant failed to prove fair termination of the Respondent.

Mr. Masinga also argued issue three and four collectively. He contended that the Respondent claimed in the CMA Form 1 to be paid T.shs. 46,240.000/-, he also claimed to be re-instated and for full payment. However, contrary to what was prayed by the Respondent the Hon. Arbitrator awarded other reliefs that were not mentioned in CMA Form 1. He said that the award of notice pay is justifiable as it is statutory if the employee is found to be unfairly terminated. Additionally, he cited section 40 (2) of the ELRA which provides:

> *"An order for compensation made under this section shall be in addition to, and not a substitute for, any other amount to which the employee may be entitled in terms of any law or agreement."*

He argued that the above provision clearly explains that an employee may be entitled to other reliefs or remedies that are lawfully provided or he is entitled by virtue of an agreement with the employer. He challenged the award of rental allowance, communication allowance, responsibility allowance and general damages by the Arbitrator. He argued that the same are not statutorily provided and there was no agreement between the parties to such effect. He added that even the Respondent did not testify in his evidence that he used to enjoy such payment when he was in employment. He cited the case of ***Leopard Tours Ltd. v. Rashid Juma & Abdallah Shaban*** [2014] LCCD 7 in which it was held:

*"It is to be noted that the law; i.e. S. 40 of the Employment and Labour Relations Act, gives the discretion to the Court to decide which amount to be paid as compensation but such discretionary powers should not be allowed suo motu, but when the complainant has put it clear in the CMA FORM 1 that is the amount it considers to be justifiable to the complainant depending on the circumstances of each case. This is the position in the case of* ***Power Roads (T) Ltd v. Haji Omary Ngamero****, Rev. No. 36/2017 where Hon. Mandia, J. held that: "...there is no provision in the Employment and Labour Relations Act or in the Labour Institutions Act, particularly Section 20 on powers of the Mediators and Arbitrators to make changes suo motu, on what happens on the referral form. The additions made by the Arbitrator are therefore illegal and set aside."*

Mr. Masinga also challenged the award of T.shs. 7,200,000/-as salaries from the date of termination to the date of the award, that is, from 27th October 2014 to 08th September 2015. He argued that the Hon. Arbitrator erred by misconstruing the provisions of Section 40 (1) of the ELRA. That under this provision, compensation of salaries not paid from the date of termination are only awardable if an order for re-instatement had been issued, but this was not the case in the case at hand. He also argued that the amount of T.shs. 7,200,000/- paid as compensation for twelve months salary is so exorbitant. He argued so contending that the reasons and procedures for termination were fair. He added that should this Court find that the reason was valid but procedures were not followed, then there is a partial procedural unfairness which cannot entitle the Respondent to twelve months' salary. He cited the case of ***Saganga Mussa v. Institute of Social Work*** [2014] LCCD 212 in which it was held:

*"...the grant of 12 months to the employee due to partial procedural unfairness was not appropriate to grant rather the Arbitrator would have circumvented the gaps of the provision of the law even by awarding less months to twelve. This Court has also vacated the grant of twelve months' salaries where the misconduct is proved but the procedures not partly followed by the employer. I therefore reduce the grant of twelve months salaries for the reasons expounded above."*

He also cited the case of ***Michael Kirobe Mwita v. AAA Drilling Manager*** [2014] LCCD 42 in which it was held:

*"The Section, i.e. S. 40 (1) nevertheless regulate the minimum compensation to be less than twelve months' remuneration. It does not regulate the maximum compensation to be awarded. However, the word which appears in S. 40 (1) before the word compensation is may and not shall. The word 'may' gives a clue that the arbitrator or Labour Court has an option to order compensation which is less than twelve months provided that the compensation which is ordered by the judge or arbitrator is just and equitable in all circumstances having due regard to the peculiar case...this Court has also previously held:...Arbitrator who has found unfair termination has discretion to award an appropriate amount of compensation found fair and just to both parties in the case and therefore S. 40 (1) (c) does not mandate the Arbitrator to order compensation of 12 months' pay in all cases of unfair termination (see* ***Sodetra (SPRL) Ltd Revision No. 2017/2008*** *(unreported)."*

Mr. Masinga concluded that the award of the CMA needs to be revised and set aside as the Hon. Arbitrator assumed some facts and powers that he did not have.

In response Mr. Suwi argued that procedural fairness entails exhaustion of the principles of natural justice in which right to be heard is among them. He contended that failure to observe the right to be heard makes the whole termination exercise unfair, illegal and has far reaching consequences as provided under Section 37 (1) (2) and (3) of the ELRA and Rule 13 of the Employment and Labour Relations (Code of Good Practice), G.N. No. 42 of 2007 and also Article 7 of the ILO Termination of Employment Convention, No. 158 of 1982. He further argued that in the case at hand, no investigation was conducted by the employer to find out whether hearing was necessary; no investigation report was tendered before the CMA; no notice or charge for hearing was served to the Respondent to appear before the disciplinary hearing so that the Respondent could explain why he remained at home waiting for response to his letter dated 20th October 2014. He was of the view that the Arbitrator reached his decision following lack of such evidence from the Applicant. He cited the case of ***Daudi Robert Mapuga & 147 Others v. Tanzania Hotel Investment Ltd (TAHI); Consolidated Holdings Serengeti Safaris Lodges Ltd., Mafia Island Lodge Ltd., and Mount Meru Hotel Ltd.***, [2015] LCCD 208 in which the Court ruled that the denial of chance to be heard which is a fundamental right renders the whole process of termination unfair.

Mr. Suwi further argued that the changing of particulars of employment is not an automatic or unilateral right vested on the employer's side only. That, the Applicant was supposed to consult the Respondent before ordering him to go to another work station at Matuli in Kyela. He argued that this requirement is mandatorily provided under Section 15 (4) of the

ELRA and the Applicant did not prove before the CMA that he consulted the Respondent about the transfer and change of position from transport officer to loading foreman. He as well cited the case of ***Naftal Nyangi Nyakibari v. Board of Trustees NSSF*** [2015] LCCD 4 in which it was held that the requirement to consult the employee before transfer is mandatory and failure to consult, the employee is entitled to refuse the new post. He argued that the Respondent's act of writing a letter requiring explanation was within the ambits of the law and his refusal to report to Kyela was justified under the law thus deserved no termination on grounds of absenteeism.

With regard to the terminal benefits awarded by the CMA, Mr. Suwi argued that in CMA Form 1 the Respondent claimed for reliefs to the tune of T.shs. 46,240,000/-. The form was served to the Applicant before commencement of the hearing at CMA. He argued that the Applicant never challenged the amount of monthly salary claimed by the Respondent which forms the basis of all the calculations in respect of notice, leave and compensation. He contended that in the opening statement of the Applicant, the Applicant only insisted that he was not ready to pay the Respondent T.shs. 46,000,000/-, but that he was ready to pay for twenty worked days in October and 28 days salary. He argued further that the Applicant failed to produce records as required under Section 15 (1) and (6) of the ELRA which would have been used to prove or disprove the claims by the employee in court. That the Applicant failed to discharge his obligation under the law to prove the remuneration payable to the Respondent during his employment and thus the Arbitrator was justified to award the amount he did. In support of his arguments he

cited the case of ***Director PTOTRANS Ltd*** (supra); ***General Manager MFTL G.D Estates Tukuyu v. Jacob Chaula*** [2011/2012] LCCD 74; ***Tanganyika Instant Coffee Co. Ltd v. Jawabu W. Mutembei*** [2014] LCCD 25 whereby in all these cases the Court ruled that the employee had an obligation to keep records of particulars of employment and to prove the same in court.

In rejoinder Mr. Masinga reiterated his position in submission in chief that the CMA awarded benefits not claimed in CMA Form 1. He stated that the alleged schedule of claim to CMA Form 1 was not even filed in the CMA thus cannot form part of the record. He also reiterated his position that it was the duty of the Respondent to prove that he used to receive house rent pay, communication allowance, responsibility allowance that he claimed to be paid. He further contended that the Applicant has not disputed the salary of T.shs. 600,000/- that the Respondent earned, instead the dispute is on the figure of T.shs. 25,000,000/- that the Arbitrator awarded. He concluded that the Respondent absconded from work for more than five days and as per decision of ***National Microfinance Bank Ltd (NMB)*** (supra) it constitutes a serious misconduct leading to termination of employment thus the Applicant was justified to dismiss the Respondent from employment.

After careful scrutiny of both counsels' submissions, I find there are two main issues calling for determination by this Court. First is whether the termination of the Respondent's employment by the Applicant was fair substantively and procedurally; and second is whether the reliefs awarded by the CMA are justifiable.

In resolving the first issue I had to scrutinize the CMA record as presented before this Court. It is clear that the Respondent was terminated on claims of absconding from work on his new work station at Matuli Kyela for five or more days. Mr. Suwi argued that there was no proof of him absconding for the said days from the Applicant as the Applicant failed to present the attendance register. This stance was also taken by the Hon. Arbitrator as it is seen at page 3 and 4 of the CMA Award. Mr. Masinga on the other hand argued that there was no need of having such proof because the Respondent testified not to have reported to the work station. He specifically quoted part of the Respondent's testimony which states:

> *"On the 20th October 2014 I reported to Mbeya office and replied that letter of transfer to Kyela. Mr. Smith told me that they will reply back the letter after HR comes back from holiday. While I was waiting that reply I found that I was given termination letter."*

Mr. Masinga put emphasis on the statement that "*while I was waiting that reply I found that I was given termination letter.*" Going through the proceedings I found that the Respondent in fact stated that:

> *"On the 20th October 2014 I reported to Mbeya office and replied that letter of transfer to Kyela. Mr. Smith told me that they will reply back the letter after HR comes back from holiday. While I was waiting that reply I found that I was given termination letter. It is not true that, I didn't attend at work for five working days."*

The above testimony shows that the Respondent did not report to Matuli Kyela but he had a reason for not reporting. It also shows that he reported to Mbeya office. The statement that "*while I was waiting that reply I found that I was given termination letter*" to which Mr. Masinga capitalizes that it proves absconding from work, in my view, does not specifically state the whereabouts of the Respondent. The testimonies of the Applicant's witnesses and the records he presented in the CMA reveal that the Applicant has an office in Mbeya and Kyela. The Respondent stated that he reported to Mbeya office and denied to have absconded from work. This fact was never cross examined as it can be revealed in the proceedings. In my considered opinion therefore, if the Respondent claims to have been in Mbeya office waiting for the HR response as directed by the said Mr. Smith, then he had a good reason for not reporting to Kyela. In the letter he wrote to the Applicant he specifically stated that he had no expertise of the newly assigned job. In the letter titled: "***Information on How Daniel Mwaibindi Dismissed Himself from Off Route Technologies***" it was stated that the Respondent neither reported to his former work station nor his new work station for 5 days consecutively. In my considered opinion, under the circumstances whereby the Respondent testified to have reported to Mbeya Office, and as ruled by the Hon. Arbitrator, it was imperative for the Applicant to provide concrete proof of the Appellant absconding from work in Mbeya office as well. The failure in providing such proof renders the Applicant/employer to have failed to prove that the termination was substantively fair.

The testimony of Witness I and II and the letter titled: "***Information on How Daniel Mwaibindi Dismissed Himself from Off Route Technologies***" reveal

that the reason for transferring the Respondent from Mbeya to Kyela was poor performance of his duties. As much as the Applicant had a reason for the said transfer, it was definitely a change of particulars of employment whereby the job description and the station were changed. Since the Applicant never tendered in the CMA the particulars of employment which he ought to have kept as required under the law, it cannot be ascertained if the employment contract had provisions for change of job description or work station. **Section 15 (4) of the ELRA** provides:

> *"Where any matter stipulated in subsection (1) change, the employer shall, in consultation with the employee, revise the written particulars to reflect the change and notify the employee of the change in writing."*

The above provision mandates consultation where there is a change in particulars of employment. Mr. Masinga argued that the consultation could not be done as the Respondent had committed a misconduct which would have led to dismissal, but instead the Applicant decided to transfer him to Matuli Kyela. I in fact do not agree with his stance. **Section 15 (4)** mandates consultation upon change of particulars of employment regardless of the reason behind the change. The failure to consult renders the change of particulars illegal and the Respondent was justified to refuse the new terms unilaterally made by the Applicant.

The records also clearly reveal that the procedure for termination was not complied with. Having established that the Respondent had absconded from work, the Applicant ought to have conducted a disciplinary hearing

and accord the Respondent the right to be heard as envisaged under **Rule 13 of the Code of Good Practice**. Mr. Masinga argued that it was difficult for the Applicant to hold a disciplinary hearing because the Applicant had absconded. With all due respect to the learned counsel, I do not subscribe to his argument. The proceedings reveal that the Applicant did not prove before the CMA how he made efforts to locate the Respondent to summon him to the disciplinary hearing. Besides, if he managed to serve him the letter of termination then he could as well manage to serve him the documents relevant for the disciplinary hearing. Failure to observe the rules on termination renders the termination procedurally unfair as well.

Having ruled that the termination was both substantively and procedurally unfair, I proceed to the reliefs awarded. The Hon. Arbitrator awarded a total of T.shs. 25,800,000/- divided as follows: T.shs. 600,000/- as payment in lieu of notice; T.shs. 7,200,000/- twelve months' salaries for compensation for unfair termination according to section 40 (1) (c) of ELRA; T.shs. 7,200,000/- as salaries from date of termination to the date of the award, with a provision of the figure increasing each month upon non-payment after 14 days; T.shs. 3,000,000/- as rent allowance; T.shs. 1,200,000/- as communication allowance; T.shs. 3,600,000/- as responsibility allowance; and T.shs. 3,000,000/- as general damages.

Mr. Masinga challenged the amount arguing that the same was not stipulated in the CMA Form 1 and that the annexed schedule of claims was not properly filed thus cannot form part of the record. I have gone through the records and I agree with him that the schedule of claims was

not properly filed as it bears no stamp of the Commission. Thus it cannot be taken to be part of the record. In my view as well even if the same was properly filed, payments of communication allowance and responsibility allowance are legally entitled to an employee who is still under contract of employment because the purpose of such payments is to facilitate the smooth running of the office business. Or as argued by Mr. Masinga they could be paid upon re-instatement which is not the case in this matter. The Hon. Arbitrator also awarded T.shs. 3,000,000/- as general damages. General damages however, are to be awarded where there is clear evidence of the injury suffered. It was thus pertinent for the Respondent to prove existence of injuries something which he did not and thus in my settled view, the Hon. Arbitrator lacked the basis for awarding the amount he did on general damages. See: ***Tanzania Breweries Limited v. Nancy Morenje*** [2015] LCCD 17.

Under the circumstances therefore, the Respondent is only entitled to statutory benefits which are payment in lieu of notice, **T.shs. 600,000/-** as per section 41 (5) of the ELRA, twelve months compensation for unfair termination, **T.shs. 7,200,000/-** as per section 40 (1) (c) of the ELRA; Annual leave not taken, **T.shs. 600,000/-** as per section 44 (1) (a & b) of the ELRA; remuneration for work done before termination which the Applicant stated to be 20 days, **T.shs. 400,000/-** as per section 44 (1) (a) of the ELRA. Since the Respondent had completed 12 months of continuous service with the Applicant/employer and this Court has ruled that the termination was substantively and procedurally unfair, he is entitled to severance pay of **T.shs. 200,000/-** as per section 42 of the ELRA. He is also entitled to be transported back to place of recruitment if he was recruited outside

Mbeya City as per section 43 of the ELRA and he should be provided with a certificate of service as per section 44 (2) of the ELRA. In total the Applicant is ordered to pay the Respondent a total of **T.shs. 9,000,000/-**.

In the upshot the Award of the CMA is revised to the extent stated in this judgment.

Dated at Mbeya on this 06th day of March 2020.

**L. M. MONGELLA**
**JUDGE**
**06/03/2020**

**Court:** Judgment delivered in Mbeya in Chambers on this 06th day of March 2020 in the presence Mr. Samson Suwi, Counsel for the Respondent.

MAHAKAMA KUU YA TANZANIA (The High Court of Tanzania) DIVISHENI YA MAHAKAMA YA KAZI (Labour Division)

**L. M. MONGELLA**
**JUDGE**
**06/03/2020**