

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

LABOUR REVISION APPLICATION NO. 78 OF 2020
(Originating from Mgogoro wa Kazi Na. CMA/MZ/NYAM/25/2020)

SGA SECURITY (T) LIMITED APPLICANT
VERSUS
WILSON MWASAKAFYUKA RESPONDENT

RULING

4th & 26th February, 2021

RUMANYIKA, J.:

It is against award and orders of the Commission for Mediation and Arbitration Mwanza (the CMA) dated 28/07/2020 following February, 2020 termination by SGA Security (T) Ltd (the applicant) of Wilson Mwasakafyuka (the respondent). According to records employed by them on 01/08/2013 as driver currently paid salary of shs. 582,000/= monthly.

The circumstances leading to the impugned termination would, but in a nutshell read that in ordinary course of business and on duty, having caused a road accident, but contrary to law he did not report it to police or something, after the respondent was consequently summoned before the

disciplinary committee he confessed gross negligence and he was on that ground terminated.

Whereas Ms. Janeth Eden and Mr. Eliamani Daniel learned counsel appeared for the applicant, the respondent enjoyed services of Mr. I. Mshongi, learned counsel.

The 4 grounds for revision may very briefly read as follows:-

- (a) That the Arbitrator's failure to hold that the termination was in terms of substance and procedure fair.
- (b) That the Arbitrator improperly analysed the evidence.
- (c) That the Arbitrator grossly erred, with no reasons having awarded compensation of shs. 14,986,500/= instead of shs. 5,570,880/= claimed by the respondent.

The respondent having made out his case, in line with the above narrated background he stated that he was in the back knocked and the car sustained minor damage such that the two drivers solved it amicably and he was done only that he was at a later stage summoned and just like that terminated on the very 03/02/2020.

to save his employment, the respondent may have just confessed the employer's allegations.

Each one in turn Mr. Eliamani Daniel and Ms. Janeth Ened in a nutshell they submitted; **(1)** that upon committing the gross negligence the respondent was given more than 48 hour time required to prepare for hearing one having been notified on 01/02/2020 and he was heard on 03/02/2020 **(2)** that with regard to such documentary evidence sufficed what was canvased by them during the closing submissions because unlike in ordinary civil cases, labour case procedure had a more simplified procedure of adducing evidence (cited the case of **Secretary General ELCT North Western Dioces V. Edward Mugulubi** (2013) HC Labour Case Digest at page 131 that had the Arbitrator considered all this he should have reached at a different conclusion much as also, the respondent had only claimed shs. 5,570,880/= not shs. 14,986,500/= awarded in total disregard of the extent of loss suffered by the applicant. That is all.

Mr. Mshongi learned counsel submitted that however good might be, in their closing submissions the parties may have also canvased a number of documentary or any other evidence yes, but that one notwithstanding. It

is until such time where evidence was adduced and tested in court therefore failure of the Arbitrator to hold otherwise, in this case the respondent was denied of right to be heard (case of **Zanzibar Telecommunication Ltd V. Ally Hamadi Ally and 105 Others**, Civil Appeal No. 295 of 2019 (CA) unreported. **Second**, a mere reference to Section 40 (1) (c) of the ELRA Rule 32 (5) (a) (b) and (c) of GN No. 67/2007 did not necessarily entitle one 24 month salary compensation, the quantum and award of shs. 14,986,500/= therefore it was fair. **Third**, the shortest notice for hearing (only served and heard on the very 03/02/2020) it contravened the procedure the respondent was therefore unfairly terminated. **Fourth**, that the ground for termination may have been a road accident due to the respondent's gross negligence yes, but there was no proof of the accident because no police report or anyone who witnessed it happen appeared in the CMA. That is all.

Now was termination of the respondent fair? The answer is no for **six** (6) main reasons. **1**; the sole ground for termination may have been gross negligence leading to the road accident and he confessed it yes, but not only the accident wasn't proved having had occurred, but also, according to records, but contrary to the applicant's interpretation, in his evidence

the respondent merely complained of having had been knocked in the back by the other and now missing driver. **2;** the respondent might have had confessed in writing yes, but no copy of the statement was produced in evidence. The applicant may have had annexed it onto the notice of opposition and or exhaustively canvassed it during closing submissions before the Arbitrator yes, but as Mr. Mshongi learned counsel argued, that one it wasn't worth the name evidence because no single copy was duly tendered in evidence by way of examination/cross examination tested and to be recorded as such. It goes without more words therefore, that on that one the respondent wasn't fairly heard (case of **Zanzibar Telecommunication Ltd** (supra). The issue of the respondent's confession was neither here nor there. I would therefore without hesitation hold that the respondent was for no good reasons terminated leave alone reasonable ground. **4;** the respondent was just served and heard by the committee on the very 03/02/2020 what a short notice! (Case of **Multi Choice Tanzania Ltd V. Felix Nyam**, Rev. No. 09/2018, HC Mbeya (unreported). **5;** as very slight and little as it might be, just for the sake of argument the respondent may have caused the accident and damage to the employer's vehicle yes, but the applicant did not justify the termination


S. M. RUMANYIKA

JUDGE

05/02/2021

The ruling is delivered under my hand and seal of the court in chambers this 26/02/2021 in the absence of the parties.




S. M. RUMANYIKA

JUDGE

26/02/2021