

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**LBOUR REVISION NO. 39 OF 2020**

*(Originating from the Commissioner for Mediation and Arbitration at Mwanza  
Employment Dispute No. CMA/MZ/NYAM/226 - 186/2018)*

**REUBEN SUNGWA ..... APPLICANT**

**VERSUS**

**TRUSTEES OF TANZANIA NATIONAL PARKS ..... RESPONDENT**

**J U D G M E N T**

*Date of last Order: 09.02.2021*

*Date of Judgment: 18.02.2021*

**A.Z.MGEYEKWA, J.**

The applicant; REUBEN SUNGWA was dissatisfied with the arbitrator's award in CMA/MZ/NYAM/226 - 186/2018 whereas, the Commission for Mediation and Arbitration decided in favour of TRUSTEES OF TANZANIA

NATIONAL PARKS, the respondent. The application before this court is supported by an affidavit deposed by Inhard E. Mushongi, the applicant's Advocate. The respondent challenged the application by filing a Notice of Opposition and a Counter-Affidavit deponent by Richard Kafwita, Principal Officer of the respondent. The applicant in his chamber summons prays for the following Orders:-

- 1. That this Honourable Court be pleased to call for and examine the records, ruling, and orders of the Commission of Mediation and Arbitration for Mwanza with respect to its propriety, legality, and procedurals with respect to Labour Dispute No. CMA/MZ/NYAM/226 - 186/2018 dated 31<sup>st</sup> January, 2020, and revise the same accordingly.*
- 2. That, this Honourable Court be pleased to hold that the proceedings and subsequent of awards of the Commission for Mediation and Arbitration for Mwanza in the forenamed Labour Dispute is bad in law on account of being irregular, irrational, and illegal.*
- 3. That, the Court grants any other order it deems fit and just to grant.*

Before going into the merits of the revision, it is important to comprehend what transpired at the Commission for Mediation and Arbitration which cropped the present revision. The applicant and the

respondent had an employer and employee relationship. The dispute emerged on 08<sup>th</sup> December, 2017 whereas the respondent terminated the applicant. According to the CMA F1, the plaintiff filed a dispute before the CMA demanded terminal benefits whereas he claimed for leave pay, notice of termination, transport allowance, subsistence allowance, and repatriation costs. The applicant testified that he has an account with the Tanzania Postal Bank account number 0100022222994 and obtained a loan from the Tanzania Postal Bank and the respondent acted as a guarantor while he was not part of the contract. Both parties had an opportunity to defend their case and after the Commission for Mediation and Arbitration findings it decided in favour of the respondent.

The complainant could not see justice and decided to file the instant application.

In prosecuting this appeal, Mr. Inhard Mshongi, learned counsel, and Mr. Samwel Ochina, learned counsel respectively, appeared for the appellant and respondent. Both learned counsel had earlier on filed their respective written submissions, reply to the written submission, and rejoinder for and



against the appeal which they sought this court adopts and form part of their submissions.

Supporting the application, Mr. Mshongi, learned counsel for the applicant urged this court to adopt his notice of application, chamber summons, and affidavit, as integral part of his submissions at the hearing. Mr. Mshongi came up with three issues that he prays for this court to determine. The first issue is whether the respondent was under a legal obligation to make payment for loan recovery on the behalf of the applicant or whether there was a contract of guarantee between the parties to this application.

It was Mr. Mshongi contentious that the respondent was not under any legal obligation to be a guarantor of the loan advanced to the applicant by the Tanzania Postal Bank since the respondent was not part to the said contract and not a signatory to that contract. He added that the consumer credit facility (Exh.EF1) was signed by the applicant and the Tanzania Postal Bank, the guarantor did not sign. He insisted that for that reason the guarantor was not part of the contract and had no any legal obligation to act on behalf of either party in the said contract. Mr. Mshongi went on to argue

that the respondent at the CMA relied on his submission referred to the case of **CRDB Bank Limited v Issack B Mwamasika and Others**, Civil Appeal No.139 of 2017 to justify that the respondent was the guarantor contrary to the evidence on record. He referred his court to Exh. EF1 and argued that the applicant pledged that in the event of any termination or failure to pay, Tanzania Postal Bank should recover the said money from the terminal benefit that is pension funds, not repatriation allowances as claimed by the respondent. He faulted the CMA for relying on Exh.EF10 as proof that the applicant has authorized the respondent to make payment out of repatriation allowances.

Mr. Mshongi went on to argue that the respondent was required by the applicant to deposit only Tshs. 150,000/= and the rest amount to be deposited to TANAPA accounts and the same to be deducted from his salary, not from any other source.

As to the second issue, validity of evidence, Mr. Mshongi urged this court to ignore the said evidence for being contradictory. He argued that PW1 testified that the amount received from the respondent was directed to Tanzania Postal Bank as beneficiary and was deposited in account number

01 – 18 – 210 – 280 400 04. He added that when he was testifying as DW1 he testified that the said money was deposited into the applicant's account.

Submitting on the third issue, whether there was enough evidence to prove that the applicant has been paid repatriation and subsistence allowances. Mr. Mshongi without hesitation stated that the applicant was not paid the repatriation and subsistence allowances. He had the following reasons that the account in which the respondent claimed to deposit the money was only required to receive Tshs. 150,000/= and PW1 testified that the said account only received money once since it was opened, thus, it is clear that no money has been deposited in the said account. He added that there is a contradiction as to where the money was deposited as PW1 said that the money was deposited in account number 01 – 18 – 210 – 280 400 004 and when he testified as DW1 he testified that the money was deposited in account 01000222994.

On the strength of the above submission, Mr. Mshongi urged this court to revise the Commission's award and order the respondent to pay the repatriation and subsistence allowances. To support his prayer he referred



this court to the case of **Gasper Peter v Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017.

Responding, in answering the first issue Mr. Ochina argued that PW1 testified that Reuben, the applicant took the loan and the employer, the respondent was his guarantor. He argued that though the credit facility was not filled in but it is clear that it was a facility from the Tanzania Postal Bank and it was directed to Reuben Sungwa and endorsed by the respondent using its official stamp and signed by the Chief Park Warden guaranteeing the applicant. Mr. Ochina went on to submit that the applicant did not deny that he had a loan with Tanzania Postal Bank and did not furnish any evidence that he was guaranteed by other than by his employer. He added that without any security the applicant could have not succeeded to get the loan.

Mr. Ochina continued to submit that DW1 in his testimony on page 9 of the award referred to the credit facility which was Exh. 1 and it was proved that the guarantor of Reuben Sungwa was his employer vide Exh. EF2. Mr. Ochina referred this court to Exh. EF1 and Exh.EF4, and argued that the applicant made an irrevocable pledge to repay the loans from, inclusive of

his terminal benefits, and signed the application for consumer credit, the respondent guaranteed him the signature and rubber stamp of the respondent were affixed.

Arguing on the second issue, the validity of evidence. Mr. Ochina argued that the applicant's argument is baseless because both learned counsels prayed to use the same witness and their witnesses had the privilege of being cross examined by both parties. Mr. Ochina went on to testify that the respondent was the one who guaranteed the applicant and the beneficiary of the loan paid in Tanzania Postal Bank account number 01000222994, the applicant's account. Mr. Ochina added that there is no any contradiction on record since PW1 who also testified as DW1 was a credible witness.

Mr. Ochina did not end there he argued that the funds were transferred from NMB account No. 61901100008 to Tanzania Postal Bank account No. 01 – 18 – 210 – 288400004 where it was supposed to stay before it was transferred to the client's account.

Responding on the issue of whether there was any evidence to prove that payment of repatriation allowances was made through Tanzania Postal Bank account. Mr. Ochina submitted that there was no any other account



number other than the one furnished by the applicant. The learned counsel for the respondent went on to state that all payments were prepared and effected directly to that bank account as no payment could have been made other than through a bank account. Mr. Ochina further submitted that the applicant was paid for transport, luggage, leave and one month's salary therefore he cannot expect payment for the claims already been paid. To fortify his submission he referred this court to Exh. EF9. Mr. Ochina continued to state that the case of **CRDB Band v Isaack** (supra) shed some light on the responsibility of a guarantor to ensure that every terminal benefit is channeled through a bank.

On the strength of the above submission, Mr. Ochina beckoned upon this court to dismiss the application for lack of merit with costs.

Rejoining, the learned Advocate for the applicant reiterated his submission in chief and insisted that the guarantor did not sign the credit facility thus he is not part of the contract. Mr. Mshongi also insisted that PW1 and DW1 evidence were not credible the same should be relied on by this court since it was contradictory in nature. He insisted that the Commission relied on Exh. EF 10 to reach its decision while the exhibit shows that on

Tshs. 150,000/= should be remitted to Tanzania Postal Bank not otherwise and the remaining balance from the applicant's salary was supposed to be deposited in TANAPA accounts. He argued that Tshs. 6,000,000/= was not salary but repatriation allowance which was remitted to Tanzania Postal Bank contrary to directions issued under Exh. EP 10 no other document which proves that the applicant has directed the respondent to remit the whole amount of his income to the account mentioned in Exh EP10 thus, the payment made by the respondent as repatriation allowances of the applicant to cover the loan was made illegally since the respondent was not a guarantor.

On the strength of the above submission, Mr. Mshongi beckoned this court to allow the application and revise the Commission's award.

I have gone through the Commission for Mediation and Arbitration records and this court dully considered the submissions of both learned counsels with eyes of caution. The issue for determination is whether the award was properly procured. I am going to address the issues which is brought before this court by the learned counsel for the applicant and find out if the Commission reached a fair decision.



In addressing the first issue, whether there was a contract of guarantee between the parties to this application. I have scrutinized both parties' evidence as far as the validity of the insurance policies. The main battle ground between the parties is that the applicant complains that the respondent was not a guarantor therefore he was not part of the contract. I have gone through the records and found that the applicant tendered several documents to prove his case including the Consumer Credit Application Form (Exh. EF1) which is in dispute. The applicant claims that the respondent did not sign the forms therefore he was not part of the contract. While the respondent argued that the respondent is the guarantor because he is the applicant's employer. To fortify his argumentation he went further to argue that the Exh.EF1 bears the employer's rubber stamp.

First of all, it is noteworthy that Banks have their own procedure in obtaining loans from their Banks specifically when it involves an employee, amongst is that an employer stands as a guarantor for the loan of his employees. In this instant application, the applicant's Advocate insisted that the respondent did not stand as a guarantor for the loan which the applicant obtained from the Tanzania Postal Bank. Therefore in his view, he is certain that the respondent was not part of the contract. A question to ask if that is



the understanding of the applicant's Advocate then who secured the applicant's loan? The applicant in his testimony did not mention who was the guarantor for the loan which he obtained from the Bank apart from the respondent who is his employer.

I have scrutinized the Exh. EF1 and found that the applicant filled in the forms and below there is a respondent's official stamp, the same is dated and the respondent appended his signature. In my considered opinion, I find that there was a contractual relationship between the applicant and the respondent under the contract of the guarantor in which he stands as a surety. The bank cannot issue a loan to the applicant without being assured that in case of default the guarantor will be responsible. In fact, when the debtor defaults, the creditor or bank is entitled to proceed against the guarantor. Therefore in this case the applicant has failed to prove who was his guarantor apart from the respondent. The documents specifically Exh. EF 1 and Exh. EF2 and Exh. EF4 proved that the respondent was the guarantor.

Nonetheless, when PW2, Reuben Sungwa was examined in chief, he did not testify that the respondent was not his guarantor even during cross examination the issue of guarantor did not arise. PW1 testified that the

respondent is the one who guaranteed the applicant's loan and the applicant did not object. In short the issue of guarantor and authenticity of Exh. EF1 was not an issue at all. With the above analysis, I find no any harm for the respondent's counsel for citing the case of **CRDB Bank Limited v Issack B. Mwamasika and Another** (supra) because it is obvious that the respondent was the guarantor. Therefore, this ground is demerit.

According to DW1, the terminal benefits were deducted to pay the loan after realizing that the applicant was terminated. The applicant on his part through Exh.EF10 directed the respondent to deduct the repatriation allowances to TANAPA account. But the respondent deposited the repatriation allowance to account number 01000222994. I do agree that the respondent deposited the money to the applicant's account number 01000222994 contrary to the applicant's directives. However, it does not mean that the respondent did not pay the applicant his terminal benefits. The bank had the right to deduct its money. It does not matter whether the money deducted was part of repatriation or NSSF or any other payment.

Concerning the second issue, whether the evidence of PW1 and DW1 who was the same person is credible to be relied upon by the Commission.



The records reveal that both parties prayed to the Commission to call the same witness to testify and prove their case. In his testimony, PW1 testified to the effect that the respondent entered into an agreement with Tanzania Postal Bank in issuing loans to his employees and the applicant was among the employees who obtained a loan from Tanzania Postal Bank with account number 01000222994. PW1 testified that the applicant had two accounts with Tanzania Postal Bank another account was 01200099319.

The applicant's Advocate complained that Charles Mindolo (PW1) evidence is contradictory in the sense that PW1 testified to the effect that the amount received from the respondent was directed to Tanzania Postal Bank as a beneficiary and the same was deposited in account number 01 – 18 – 210 – 280 400 004. When Charles Mindolo testified as DW1 he testified that the said amount was deposited to the applicant's account. He further testified how the money was transferred from NMB account to Tanzania Postal Bank account number 01 – 18 – 210 – 280 400 004 at last, the money was transferred to the applicant's account number 01000222994. It is trite law that in assessing a witness's evidence must be looked at its entirety, to look for inconsistencies, contradictions and or implausibility; or if it is entirely consistent with the rest of the evidence on record. In the instant application,



I have noted the contradiction although the contradiction was not material and therefore was of no consequence. The evidence on record was clear and satisfactory. I am saying so because even if the money was transferred to Tanzania Postal Bank account number 01 – 18 – 210 – 280 400 004, the said money was later deposited to the applicant's account number 01000222994. Therefore, the witness testimony did not debauch the truth that the applicant's money was deposited into the applicant's account and he received it. Therefore, this ground is demerit.

Now in consideration to the last issue; whether there was any evidence to prove that payment of repatriation allowances was made through Tanzania Postal Bank. Basically, the claim which was before the Commission for Mediation and Arbitration was a claim for payments of repatriation allowances, annual leave, notice, certificate of service, and subsistence allowance. The Commission's findings revealed that the applicant allowances were paid in his account. The records reveal that the applicant was paid Tshs. 5,914,397.28/=.

The applicant claims that the account which the respondent claims to deposit money was required to receive only Tshs. 150,000/= from the

applicant's salary, the same was confirmed by PW1 and the he stated the same in his letter (Exh. EF10). DW3 also testified to the effect that the respondent paid the applicant's benefits in his bank account number 01000222994. Nevertheless, DW3 evidence was supported by a deposit slip of Tshs, 5,914,397.28/= (Exh. EF5), revealing that the money was deposited in the applicant's account number 01000222994.

In my considered opinion, the applicant's claims are unfounded, I am saying so because it is indisputable fact that the respondent paid the applicant benefits in a tune of Tshs. 5,914,397/= the same was deposited in his account number 01000222994. Therefore, it is not fair to claim that the respondent did not pay him the said amount. I understand that the applicant through his letter (Exh. EF10) directed the employer to pay Tshs. 150,000/= to his account number 01000222994 and the rest of the payment was to be paid in TANAPA account. However, the respondent paid the applicant's benefits payments in the applicant's account number 01000222994, while he was directed to deposit the money in TANAPA account. In my considered view, the respondent went into an error although the said error does not debauch the truth that the applicant was paid. Therefore, compelling the

respondent to effect the payment in TANAPA account will amount to double payment.

In sum, the Commission for Mediation and Arbitration decision was just and fair. The applicant had no justifiable claims against the respondent. In that regard, there is no justifiable cause to fault the decision of the Commission for Mediation and Arbitration. I proceed to dismiss the entire application without orders as to costs for want of merits.

Order accordingly.

Dated at Mwanza this date 18<sup>th</sup> February, 2021.



  
A.Z.MGEYEKWA

**JUDGE**

18.02.2021

Judgment delivered on the 18<sup>th</sup> February, 2021 via audio teleconference, and Mr. Inhard Mshongi, learned counsel for the applicant also holding brief for Mr. Samwel Ochina, learned counsel was remotely present.

  
A.Z.MGEYEKWA

**JUDGE**

18.02.2021

Right to Appeal explained.