

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT MUSOMA

LABOUR REVISION NO. 38 OF 2020

(Arising from the ruling of the Commission for Mediation and Arbitration dated 1st December, 2020 in Employment Dispute No. CMA/MUS/07/2019)

NYANZA ROAD WORKS LIMITED..... APPLICANT

VERSUS

FESTO ADAM RESPONDENT

JUDGEMENT

1st and 9th April, 2021

KISANYA, J.:

In this application, the applicant, Nyanza Road Works Limited applies for revision of the ruling of the Commission for Mediation and Arbitration for Mara at Musoma (the CMA) in Employment Dispute No. CMA/MUS/07/2019. The application was made by way of Chamber Summons supported by an affidavit. The respondent, Festo Adam filed a counter-affidavit to object the application.

Before going further, it is necessary to narrate the relevant facts which constitute the brief background of the matter. Before the CMA, Festo Adam filed an employment dispute against his employer, Nyanza Road Works Limited. He

claimed for unfair termination. Upon full trial, the CMA issued an award dated 7th August, 2019 against the applicant. The award ordered the applicant to reinstate the respondent and pay him salary arrears to the tune of TZS 5,145,000/-. The applicant unsuccessfully applied for revision. This Court varied the CMA's award by holding that the respondent was entitled to salary arrears of TZS 3,000,000/-. Further, in alternative to an order for reinstatement, the applicant was given an option of paying compensation of twelve month's salary in addition to salary due and other benefit from the date of unfair termination to the date of final payment.

Following that decision, Festo Adam applied for execution of the judgment and order of this Court. He contended that the applicant had declined to reinstate him. On 30th October, 2020, the Hon. Deputy Registrar asked the CMA to calculate the amount of money which Festo Adam was entitled to. On 1st December, 2020, the CMA, through Hon. Mourice Egbert Sekabila (Arbitrator) ordered the applicant to pay the respondent sum of TZS 11,125,000 within 14 days from the date thereof. It is that decision which prompted the applicant to lodge the present application. The grounds for revision as set out in paragraph 7 of the affidavit reads:

(a) That the said Mourice Egbert Sebakila never heard the parties before delivering the Ruling.

- (b) That the said Arbitrator erred in holding that the Applicant refused to reinstate the Respondent.*
- (c) That the Honourable Arbitrator erred in amending its award without being properly moved.*
- (d) That it was wrong on the side of the Arbitrator to find the Respondent is entitled to salaries from the date of termination to December, 2020.*
- (e) That the CMA erred grossly when holding that the Respondent had paid TZS, 3,000,000 which the Applicant doesn't know.*
- (f) That there are computation errors which makes the figures incorrect.*
- (g) That neither party was present at the delivery of the ruling and the Applicant was not notified of the date of Ruling.*

At the hearing of this matter the applicant was represented by Mr. Ludovic Joseph and Ms. Mirembe Lameck, learned advocates. On the other hand, the respondent appeared in person.

Having gone through the record and the submissions made by the parties, I am of the view that this application can be determined by addressing two issues raised in the grounds of revision. These are whether the Arbitrator had jurisdiction to amend his own award and whether the parties were given the right to be heard.

Starting with the issue of jurisdiction to amend the award, Mr. Joseph argued that the Arbitrator's role was to calculate the required amount due to the applicant upon being instructed by this Court. He contended that the Hon. Arbitrator amended his own award and the decision of this Court while he has no jurisdiction. In reply, the respondent submitted that the Hon. Arbitrator did not error.

I have gone through the provision of section 90 of the Employment and Labour Relations Act [Cap. 366, R.E. 2019]. It provides that the arbitrator may correct any clerical mistake or error arising from any accidental slip or omission that appears in the award. The arbitrator may exercise that power upon being moved by either party or on his own motion. In view of the above cited provision, apart from clerical mistake or error arising from accidental slip or omission, the Arbitrator has no mandate of amending his own award.

As rightly argued by Mr. Joseph, the ruling subject to this Court suggests that the Arbitrator amended his own decision on the ground that, the Commission had been so directed by this Court. For better understanding of the discussion at hand, the relevant part of the said ruling is quoted hereunder:

"Following directives of the High Court of Tanzania vide the letter with reference No. Labour Execution No. 30/2020 dated 30th October, 2020; this Commission was ordered to amend the orders (i) and (ii) as reflected at page 5 of the award dated 7th August,

2019 from reinstatement into compensation....The call for amendment of orders (i) and (ii) is to the effect that the Commission should calculate the amount from the applicant's twelve months remunerations, salary dues and other benefit from the date of unfair termination to the date of final payment following respondent's refusal to reinstate him;"

With due respect, this Court did not order the Hon. Arbitrator to amend his award. As stated herein, the Court had already varied the arbitrator's award. Therefore, the Hon. Arbitrator had nothing to amend.

I have also read the letter referred to in the said ruling. This Court (through the Deputy Registrar) did not order the CMA to amend the award. According to the letter, the CMA was instructed to calculate the required amount. Therefore, reading from the ruling subject to this application, I find that what was held by the CMA is more than calculation but an amendment to its previous award. That power is not vested in the Arbitrator.

As regard the second issue, Mr. Joseph submitted that the parties were not accorded the right to be heard guaranteed under the Constitution and regulation 8(3) of Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators, 2007, GN No. 66 of 2007. In response, the respondent contended that parties were heard before Hon. Soleka who ordered that ruling would be given by Hon. Selabila who had issued the original award. The respondent went

on to submit that the Hon. Arbitrator was not obliged to hear the parties at the time of making calculation.

On my part, I agree with Mr. Joseph that right to be heard is guaranteed under Article 13(6)(a) of the Constitution. A person who is likely to be affected by the decision of any judicial organ or person is entitled to a right to a fair hearing which include the right to be heard. It is settled law that any decision arrived at in contravention of the right to be heard is a nullity. This is because the violation is considered to be a breach of principles of natural justice. See the decision of the Court of Appeal in **Abbas Sherally and Another vs Abdul Sultan Haji Mohamed Fazalboy**, Civil Application No. 33 of 2002 (unreported) where this position was clearly stated.

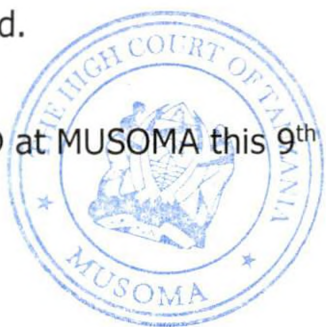
Therefore, much as the Hon. Arbitrator purported to amend his previous award, he was duty bound to hear the parties because they were likely to be affected by his decision. The proceedings tell it all. Although the parties appeared before Hon. Soleka (Arbitrator) on 13th November, 2020, they were not asked to address him. Further, the Hon. Arbitrator did not tell them whether the Commission was amending its award. He just made some calculations without making any ruling/order or asking the parties to comment on the same. Thereafter, the ruling was issued by another Arbitrator (Hon. Sekabila). The

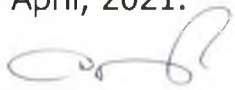
second arbitrator did not hear the parties thereby breaching the principle of natural justice.

At this juncture, I am of the considered opinion, the above pointed irregularities vitiated the proceedings and ruling of the CMA. I find it not necessary to consider and determine other grounds of revision because they are premised on the ruling of the CMA.

All said and done, the application is found meritorious and granted. I accordingly, nullify the CMA's proceedings dated 13th November, 2020, quash and set aside the ruling dated 1st December 2020. In consequence, the pending execution proceedings (Execution No. 30 of 2020) should be conducted in accordance with the judgment and decree of the Court and the laws. It is so ordered.

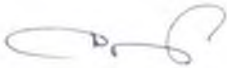
DATED at MUSOMA this 9th day of April, 2021.




E. S. Kisanya
JUDGE

Court: Judgement delivered this 9th day of April, 2021 in the presence of the Mr. Sileo Mazullah, learned advocate for the applicant and the respondent in person. B/C Simon present.




E. S. Kisanya
JUDGE
09/04/2021