IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY]

AT ARUSHA

LABOUR REVISION APPLICATION NO. 19 OF 2019

(Originating from Labour Dispute No. CMA/ARS/ARB/210/2017)

TANZANIA BREWERIES LIMITED .....APPLICANT

Versus

ERICK ERNEST .....RESPONDENT

JUDGMENT

11th February & 20th May, 2021

MZUNA, J.

~~**Tanzania Breweries Limited** (the applicant herein), has lodged this application~~ consequent upon the Commission for Mediation and Arbitration for Arusha (hereinafter the CMA), made an order that **Erick Ernest** the respondent herein), be reinstated from 24/3/2017 without loss of remuneration up to the date of actual reinstatement. This order follows a complaint by the respondent that he was unfairly terminated. The CMA ruled out the respondent's charge of termination based on misconduct.

The background story being that the respondent was initially employed as Process Engineer on 01/10/2010. Then in 2015, he was promoted to the position of Utilities Manager, the post he held up to the time of his termination while at Arusha TBL depot. Prior he was at Mwanza TBL deport before being transferred to Arusha TBL Plant. What prompted the said termination was the initial whistle blower alert information which the Management received sometimes in July 2016 to the effect that there was fraud and theft

of the Company properties by dishonest staffs. The Company instituted an audit which revealed that there was a Company known as Altastar Company Limited which it was established, had rendered sham services worth more than 1 Billion shillings to the applicant. Apart from the respondent and one Anamarie Mashoto, the audit report also mentioned other applicant's employees who participated in the bogus deal including John Lugongo, Baldwin Mgendela and Ben Msandu. It was further revealed that Altastar Company was owned by Joseph Bilasi Kimath and his wife Anamaria B. Mashoto who was also the applicant's employee.

The audit report (exhibit P1) among others showed that there were frequent communications between the respondent and Anamarie Mashoto. This information was retrieved from the respondent's office laptop and his mobile phone. The respondent was recorded to have received Tshs 3,200,000/= from Mashoto, which was deposited in his Bank account. The respondent's defence was that he received it as condolence. The investigation also revealed that the respondent modified other supplier's quotations (such as BSS Insulators) to suit that of Altastar resulting to offering tenders to that Altastar Company not the initial bidder supplier. The final investigation report revealed that the respondent failed to execute his duties honestly, in a reasonable and acceptable way. It was found that being utilities Manager, ought to have disclosed the information regarding Anamarie's misuse of the Company funds for personal gain as well as disclosing conflict of interest between him and Altastar Company. He failed to keep the best interests of his colleagues, the Company and the stakeholders in mind. The report recommended that the respondent should be taken through an internal disciplinary hearing process.

On 20/1/2017, the respondent was suspended from employment pending investigation. Notification of disciplinary hearing was served to the respondent on 9/3/2017. Disciplinary hearing was conducted on 15/3/2017, where the respondent was charged with the following offences. *First*, gross misconduct and dishonesty; *second* fraud and forgery; *third*, failure to disclose conflict of interest; and *fourth*, serious breaches of organizational rules or policy which has the effect of causing an irreparable break down in the employment relationship. All the above offences, contravened the Employment and Labour Relations (Code of Good Practice) Rules, G.N No. 42 of 2007 and Tanzania Breweries Limited, Managing Conduct and Relationships at workplace (Code of Good Practice) which was signed by the respondent on 9/8/2010.

Having heard both parties, the disciplinary hearing committee found the respondent guilty of all the offences which were serious misconducts. Consequently, he was officially terminated on 24/3/2017. He was awarded Tshs. 6,551,484.07 as his terminal benefits.

At the hearing of the application, the applicant was represented by Mr. Daniel Danland Lyimo, learned advocate while the respondent was represented by Mr. Asubuhi John Yoyo, learned advocate who also represented him in the CMA. Hearing proceeded by way of written submissions. Parties filed their respective affidavit and counter affidavit. The main legal issues raised by the applicant are:-

i) *The Arbitrator erred in law by stepping into the shoes of the Respondent and failed to act with impartiality which leads to miscarriage of justice to the Applicant;*
ii) *The Arbitrator erred in law by determining the matter based on personal feelings, emotions and sympathized with the Respondent;*

iii) *The Arbitrator acted with bias in the entire proceedings even after a letter of complainant issued by the Applicant, he failed to withdraw from the proceeding without justifiable reasons.*

iv) *The Arbitrator erred in law for a failure to adhere to the Rules and Procedure governing Mediation and Arbitration by chasing out the Applicant's representative from proceedings without justifiable reasons;*

v) *The Arbitrator erred in law for failure to admit evidence/exhibit tendered by the Applicant's witnesses without reasonable justification;*

vi) *That the Arbitrator erred in law and facts by failing to acknowledge and rule out that the procedures for fair termination were adhered effectively;*

vii) *That, the Arbitrator's Award is inconsistent, illogical and does not reflect the proceedings i.e. evidence of PW1 was put together with that of Joseph Mwaikasu.*

viii) *The Arbitrator erred in law for failure to determine the matter at hand and instead questioning the Applicant's management procedure on handling of disciplinary matters;*

ix) *That, the Arbitrator erred in law and facts by awarding the Respondent on moral grounds rather that considering evidence adduced by the Applicant and legal issues of the dispute.*

Issue(s) for determination are first whether the termination of the respondent was both substantively and procedurally fair. Connected to that is also an issue as to whether there are procedural irregularities which calls for this court's intervention? Lastly, whether the court should revise the application on merits?

Let me start with the complaint that the applicant tendered various documents during arbitration but most documents were not admitted in evidence by the arbitrator on the pretext of the Evidence Act. Mr. Lyimo's main complaint was on the way the hearing was conducted in the CMA. According to him documents such as Altastar Company due diligence report from Brela, deposit slip from CRDB Bank and Audit report

annextures which were crucial in showing the relationship between Annamarie Mashoto and Altastar Company and relationship that existed between the respondent and Annamarie Mashoto were denied admissibility. Such denial according to Mr. Lyimo led to miscarriage of justice on the part of the applicant.

In addition to that, the arbitrator without valid reasons chased out of the room Mr. Lyimo who was representing the applicant. In his view, the arbitrator was not impartial in hearing and determination of the matter. Mr. Lyimo maintained that even after it was complained by the Company secretary that the arbitrator recuse himself in hearing and determination of the matter, still he declined. Mr. Lyimo cited two laws which regulate hearing of labour disputes in the CMA to wit: Rule 19(1)(2) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 which provides for the procedure of hearing arbitration proceedings and Rule 7(1)(2) of the Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators) Rules G.N No. 66 of 2007 which emphasize on fairness, diligence and equal treatment by arbitrators to the parties in dispute.

Similarly, Mr. Lyimo faults the award for failure to feature the evidence of the applicant. He stressed that the arbitrator failed to appreciate the evidence of the applicant that he adhered to the procedures before terminating the respondent. He implored the Court to order the matter to be retried in the CMA before another Arbitrator.

Contesting the application, Mr. Yoyo stated that the disqualification of Mr. Lyimo from representing the applicant by the arbitrator was justified since there was serious misconduct on the part of Mr. Lyimo who acted in contempt of the Commission amidst

the proceedings and disrupted the same in a manner that left the arbitrator with one option of expelling him from the Commission. According to Mr. Yoyo, Mr. Lyimo defied the order of the arbitrator who directed him to confine himself to the matters raised in cross examination while re-examining his witness but he condemned the arbitrator for being biased and impartial. Mr. Yoyo cited rule 25 of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, G.N No. 67 of 2007 which provides for the manner in which evidence is taken in the CMA. He also cited section 20(5) of the Labour Institutions Act, Cap 300 [R.E 2019] which defines what amounts to a contempt of commission. On the same parlance, Mr. Yoyo cited the case of **Yasini Mikwanga Vs. Republic** [1984] TLR 10 which stipulates on the alternative procedure of punishing a person for contempt. The learned counsel insisted that the removal of Mr. Lyimo from the Commission was valid and fair in accordance to the laws.

On the complaint that the arbitrator refused to recuse himself from hearing and determining the matter, he says having been served by the complaint, the learned arbitrator summoned the writer of the complaint who demonstrated the basis of his complaint, but there was nothing tangible or specific in his complaint. His complaint was based on what was reported to him by Mr. Lyimo which was contrary to the record. This empowered the arbitrator to refrain from recusing himself in the conduct of the case with the reasons contained in his ruling. Substantiating the principles for recusal of a Judge /Magistrate Mr. Yoyo cited the following decisions: **Khalid Mwisongo Vs. M/S Unitrans (T) Ltd**, Misc. Application No. 298 of 2016 (H.C Lab Div-DSM) which cited the Court of Appeal decision in **Laurean G. Rugaimukamu Vs. Inspector General of**

Police & Another, Civil Appeal No. 13 of 1999 (unreported); **Benjamin Mugagani Vs. Bunda District Designated Hospital**, Misc. Labour Application No. 1 of 2020 (H.C Musoma). He concluded that the counsel for the applicant mislead with the intention of tarnishing the image of the CMA.

Submitting on the complaint regarding refusal to admit some of the exhibits, Mr. Yoyo stated that the arbitrator was flexible to the extent that he allowed recalling of the witness and admitted exhibit P9. Further, there was no witness among the applicant's witnesses who prayed to tender Altastar due diligence report, which was denied. He added that the contents of all the three documents which Mr. Lyimo complained that they were denied admission, were comprehensively covered and reflected in exhibit P1. Their contents were also covered extensively in the CMA award.

Re-joining to his earlier submission, Mr. Lyimo reiterated that the arbitrator was very biased, he threw embarrassing words to the applicant's counsel which are never recorded in the proceeding. He insisted that had the earlier documents been admitted in evidence, they would have constituted the best reasons for termination of the respondent's employment. Mr. Lyimo reiterated his earlier submission maintaining that the arbitrator's failure to control the arbitration proceedings has caused miscarriage of justice on the applicant.

The complaint hinges on the handling of the proceedings. The question is, did the CMA Arbitrator, handle the proceedings properly?

To begin with the first issue, Mr. Lyimo complained on the way the arbitration proceedings were taken through by the CMA arbitrator. First, he faulted the arbitrator's

act of expelling him from representing the applicant. In his view, that prejudiced the applicant. As the CMA record speaks, on 9/11/2017 when the applicant's third witness, Joseph Mwaikasu was testifying there emerged harsh exchange of words between the applicant's advocate and the arbitrator. This happened during re-examination, when Mr. Yoyo raised an objection that Mr. Lyimo was raising new facts that were not canvassed during cross examination, Mr. Lyimo complained that the respondent's counsel kept raising objections without considering that the CMA was quasi-judicial body. The arbitrator ordered Mr. Lyimo to re-examine his witness on questions posed in cross examination. In reaction Mr. Lyimo complained that the arbitrator and the respondent's counsel were biased. He further added that he was not pleased with the conduct of the arbitrator. In contemplation that Mr. Lyimo was contemptuous, the arbitrator barred Mr. Lyimo from representing the applicant, he further ordered him to leave the room.

From the above scenario, it is apparent that Mr. Lyimo misbehaved during the proceedings which necessitated the CMA Arbitrator to find it as contempt of the Commission. No doubt, being an officer of the Court and CMA for that matter, Mr. Lyimo was not expected to behave the way he did. In case he was not pleased with the conduct of the arbitrator, there are still ways on how to lodge a complaint, not as he did. Of course, the punishment which was imposed on Mr. Lyimo, led to being barred from representing his client, the applicant.

The other complaint put forth by Mr. Lyimo is the way applicant's documents were denied admission as exhibits. He referred those documents as Altastar Company Limited due diligence report from Brela, deposit slip from CRDB Bank and Audit report annextures.

In his reply submission, Mr. Yoyo refuted that no witness who attempted to tender as exhibit Altastar Company Limited due diligence report, whose prayer was denied by the arbitrator. Having read the record, I hold and find that it shows that on 4/10/2017, while the second applicant's witness Mr. Richard Joseph Magongo was testifying, he attempted to tender as exhibit the audit report. Mr. Yoyo objected on the reasons that he was not its maker and that the annextures were photocopies and some of them were from electronic devices which did not comply with section 18 of the Electronic Transactions Act. Although Mr. Yoyo withdrew his objection regarding the maker of the report, yet the arbitrator sustained the objection. The record shows that the Commission ruled in the following terms: *"Order: Objection sustained"*

From the above order, it is not made clear as to which objection was sustained, whether it regarded the maker of the document which was withdrawn, whether it was based on the fact that some of the annextures were photocopies or whether they contravened the Electronic Transactions Act. It is not proper procedure for the arbitrator to sustain objection generally. It is on record that, it was the same report that was denied admission by the arbitrator, which was admitted by the same arbitrator on 9/11/2017. That report was tendered by PW3 Mr. Joseph Raymond Mwaikasu, who was not even the maker. Further, it was not made plausible whether its admission was in isolation of the annextures or whether they were inclusive. This to me shows that the arbitrator was biased, as contended by the applicant's counsel. There is no ground that the same document was denied admission by a witness who was not its maker and admit the very same document being tendered by another witness who is not its maker either. The

objections were more often than not directed to the applicant's witnesses. The said documents which were denied admission, were part of the annextures in the audit report and therefore crucial to build up the applicant's case.

CMA arbitrators should take a note that the CMA is relaxed from the technicalities that are provided in the Evidence Act contrary to the normal courts who must adhere strictly to those procedures. In labour disputes, the CMA deals with the substantial merits of the dispute with the minimum of legal formalities. This was also stated in the case of **Stephen Makungu & 11 Others Vs. A/S Noremco**, Revision No. 224 of 2013 (H.C Labour Division DSM). Mipawa, J. in that case while quoting Professor Ahmadullah Khan [Ph. D] in his book **"Commentary on Labour and Industrial Law;"** held the following:

> *"Precisely ... the proceedings before labour courts is not hampered by the strict rules of common law and therefore certain procedural laws like laws of Evidence, or CPC are not applicable to such proceedings. In fact, in most of the cases, Industrial Courts are competent to adopt any procedure which in their opinion would help courts to come to a just and fair conclusion. In view of the foregoing discussion, it can fairly be discerned that labour law is unique in its origin, humane in its purpose, pious in its theory and liberal in its application and interpretation....."*

I agree entirely with that observation. As stated earlier, admission of exhibits by the CMA arbitrator was greatly biased and even the verdict was more influenced by the respondent's arguments ignoring that of the applicant. As contended by Mr. Lyimo, that prejudiced the applicant who made every effort to tender the exhibits in proving her case but the same faced unnecessary objections and in the end result denied admission. I agree that rejection of some documents to a great extent weakened the applicant's case.

I revert to the complaint that the arbitrator refused to recuse himself from the conduct of the case which led to biasness. The arbitrator said he did not see justifiable reasons that would compel him to recuse from hearing and determining the case. He stated that the complaint lodged to the CMA by the applicant's secretary was hearsay, as they were words fed to him by Mr. Lyimo after being barred from representing the applicant.

I agree with him. I do not find merit in this complaint. I hold this view because in his ruling delivered on 12/4/2018 he gave reasons for not recusing himself. It is trite law that for a judicial officer to recuse himself from entertaining a case before him there must be sufficient and convincing reasons. This was held in **Standard Chartered Bank (Hongkong) Ltd Vs. VIP Engineering and Marketing Ltd,** Civil Applications No. 158 & 159 of 2011 (unreported), where it was held:

> *"It is common knowledge that there must be sufficiently convincing reasons before a judicial officer disqualifies oneself from a suit."*

To do otherwise, would amount to "an abdication of judicial function" as it was so held in the case of **The Registered Trustees of Social Action Trust Fund and Another Vs Happy Sausages Limited and Others** [2004] TLR 264. I do not find merit in this complaint.

Though the proceedings in the CMA were partially mishandled, still this court based on the principle of overriding objective, where cases must be determined justly and on merits, feels can deal with the matter at hand to its finality.

Mr Yoyo tried to impress court on the merits of the application that the respondent's termination was both substantively and procedurally unfair for the reason that he was not given a fair hearing in the audit exercise and in the disciplinary committee hearing. More so, that there was no investigation conducted after the respondent was suspended. The bottom line, he says, the respondent was charged discriminatorily since all the other employees who were mentioned in the audit report were left free and therefore substantively unfair. He implored this Court to find the award valid, fair, verifiable and in accordance with the law.

That is opposed to Mr. Lyimo who says "that the Arbitrator erred in law and facts by failing to acknowledge and rule out that the procedures for fair termination were adhered effectively."

This takes me to the substantive part of the termination. The respondent was terminated based on misconduct. The CMA faulted it simply because there was no investigation contrary to the law. That there were other employees who were implicated but were not terminated and therefore the applicant acted indiscriminately. Further that in the absence of data from the computer, there were hearsay evidence. More so that the deposited money Tshs 3.2 million which were deposited by Anna Joseph did not conclusively prove that it was deposited by Anna Maria Mashoto.

These were the grounds raised by respondent who seems also to say that he was punished based on the rules governing employees at the work place which he was not abreast with and that he was not accorded any chance of mitigation. He insisted that there was a violation by failure to conduct the disciplinary hearing as per the requirement

of Rule 13 (1) of the Code of Good Practice, G.N No. 42 of 2007. He is of the view that the Award was properly procured.

Let me start by referring to section 37 of ELRA. It provides that;

(1) "It shall be unlawful for an employer to terminate the employment of an employee unfairly

(2) A termination of employment by an employer is unfair if the employer fails to prove

(a) That the reasons for termination is valid;

(b) That the reason is a fair reason-

(i) Related to the employee's conduct, capacity or compatibility; or

(ii) Based on the operational requirements of the employer, and

(c) That the employment was terminated in accordance with a fair procedure."

It is a settled rule that in any cases of unfair termination, it is the employer who has the duty to prove that the termination was fair. Section 39 of **the Employment and Labour Relations Act, 2004 (ELRA, 2004)** which states that:

"In any proceeding concerning unfair termination of an employee by an employer, the employer shall prove that the termination is fair"

Generally speaking, incompatibility may constitute valid reason for termination provided that the employer complies with Section 37 (2) of the Employment and Labour Relations Act, No 6 of 2004; Rule 8 (1) (c) and (d) of the Employment and Labour Relations (Code of Good Practice) Rules GN No. 42 of 2017.

Definitely, the respondent did not admit the charges at the disciplinary hearing such that it would make no need to conduct investigation. The point is, could the absence of the investigation report nullify the misconduct which was proved by the applicant based on the Audit report? Second, the respondent, having opted for termination in the CMA form No. 1 could he be reinstated while the applicant was not prepared to receive him back?

On the first point, once there is an audit report, the court can proceed with imposing termination based on the audit report even without investigation report. It was held in the case of **Hamis Jonathan John Mayage vs. Board of External Trade** (supra) cited by the applicant's counsel where it was held that;

> *"As can be seen from the evidence, the complainant was served with a charge containing two counts. The first count related to failure to remit PPF statutory contributions on time, TANESCO bills on time, and taking up trips reserved for other directorates. The second count relating to making payments without the approval of the tender Committee, making payments in the absence of contracts, making payment in cash to SOLOMON KINYANJUI against Financial Regulations, and making payments without supporting documents.* ***The charges were preceded by an audit so the employer has complied with rule 13 (1) and Rule 13 (2) of the Code of Good Practice, GN 42 of 2007.****" (emphasis supplied).*

I agree with this finding and exposition of the applicable law.

In dealing with substantive fairness, it is true, the charges of misconduct were based on breach of code of conduct and company policy. Article 6.8 of the Audit report (exhibit P1) touched as well on such breach of Company Policy. The allegation by the respondent

that he was not aware of the Company policy is not true because he signed Programme for new employees the Managing Conduct Relationships at Work Place Code of Good Practice Booklet on 9/8/2010. The termination could not be faulted on that account.

The CMA seems to deal more with issue of procedural unfairness based on exhibit P.6 and P.9. Further that prescribe forms were not used to notify the respondent which I would say is flimsy reasons. I would say, the respondent was given a fair hearing because he attended disciplinary hearing chaired by Eliangilinga Lyimo (PW4) together with his representative one Mr. Mwanga Luheya, Tuico secretary, on 4/7/2016. He signed the minutes. That could not outweigh substantive fairness. It was held in the case of **G.4 Security Services (T) Ltd vs. Peter Mwakipesile,** Labour court Digest, No. 109/2011 by Rweyemamu, J (as she then was) that:-

> *"In deciding gravity of a particular misconduct, one has to bear in mind the type of the employer's business and the importance of honest in the said business..."*

The applicant was entrusted with high level of trust which he breached. The evidence of the sapplicant's witness (PW3) Joseph Raymonnd Mwaikasu, the Arusha Branch Manager said the respondent as the Utility Manager used to report to him. That there was a complaint on lack of trust and forgery. This was also given support by (PW2) Richard Magongo the Internal Auditor of the applicant who confirmed that indeed there was edited BSS company quotation to be that of Altastar company. There was collusion with Anamarie Mashoto the respondent's co employee who was one of the owners of the said Altastar, the other being her husband Joseph Bilas. Similarly, issue of receiving gifts from suppliers (Altastar inclusive) but did not disclose it contrary to Company Gift Rules

which directed employees who receive above Tshs 100,000/- to disclose it. Indeed, there was no explanation for the Tshs 3.2 million deposited in his account whether it was condolence or not. Another anomaly was the fact that the confidential documents were shared with Annamarie contrary to Confidentiality Rule. Annamarie according to the report, tendered as Id. 1, received prepared empty Goods Received Note (GRN) and Altastar was filled as the supplier to the applicant of machine building and renovation services.

In his defence the respondent challenged the audit report simply because (according to him) Magongo signed the audit report while he was not in the team. That no proof that the deposited Tshs 3.2 million was from Artarstar. That even those who were awarded tender and authorized for payment were not questioned. This defect according to him could have been cured by conducting investigation which was not done.

This argument however contradicts with his admission during cross examination that the said money was given to him by Anna Joseph as condolence, something which he admitted was unusual and therefore raised an eye brow. At one time he said could not remember past events. One can say there was inconsistency statement concerning that money. That fact coupled with forgery (editing quotation to suit Altastar company) is a clear proof of lack of trust which constitute a serious misconduct. A gross dishonest justifies termination as one of the grounds recognized by law for valid termination under Rule 12(3) (a) of the Employment and Labour Relations, Code of Good conduct GN. 42/2007. Rule 12 (1) (a) (GN. 42/2007) gives factors to be considered where termination on grounds of misconduct can be said to be fair to include:-

"Whether or not the employee contravened a rule or standard regulating conduct relating to employment."

The respondent violated "*standard regulating conduct relating to employment.*" The allegation that it was not "consistently applied" to other employees, who in the first place some had absconded from work is to place an unnecessary burden to the applicant.

Even where right to mitigation is not provided to the employee during investigation contrary to the provisions of Rule 13 (7) of the GN No. 42 of 2007 procedural unfairness cannot overrule substantive fairness as in our case. I say so because it cannot outweigh the misconduct committed by the respondent given the fact that there was fair hearing at the Disciplinary committee meeting. The CMA was therefore wrong to find otherwise.

There was both valid and fair reasons for termination under section 37 (2) (a) (b) (i) of the Employment and Labour Relations Act, Act No. 6 of 2004 read together with Rule 9 (4) and (5) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007, GN No 42 of 2007.

This takes me to the awarded reliefs. In the CMA form No. 1, the respondent claimed a total of Tshs 146,494,918/= as his terminal benefits. After hearing evidence from both parties and the tendered exhibits, the CMA made a finding that the respondent's termination of employment was both substantively and procedurally unfair, hence the said order for reinstatement. The respondent admitted had the second thought of reinstatement not termination. The award was contrary to what was asked in the CMA form No.1. It was held in the case of **SDV Transami (T) Limited v. Faustine L.**

Mugwe, Labour Revision No. 227 of 2016, High Court Labour Division at Dar es Salaam at page 6 (unreported) by Aboud, J that:-

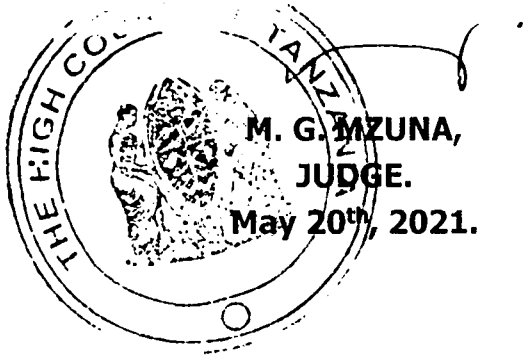
> *"I find that the Arbitrator exercised his discretionary powers without considering what had been prayed in CMA Form No.1 an error which makes the award revisable."*

I fully associate myself with the above finding. It was absolutely wrong and a total misdirection to adjudicate on matters not otherwise before the CMA.

Now what is the appropriate relief? The case of **Jackson Saul Lutemba v. Co-operative and Rural Development Bank (1996) LTD,** Civil Appeal No 70/2008, CAT (unreported) gives us an answer where the court or CMA awards compensation in lieu of reinstatement. The respondent is entitled for payment of compensation of 12 months salary remuneration plus other entitlement based on Section 40 (1) (c) and (2) of the Employment and Labour Relations Act, Act No. 6 of 2004 if the termination was unfair.

In our case termination was fair. Therefore, the respondent is entitled for payment of12 months salary remuneration only based on Section 40 (1) (c) of Act No. 6 of 2004 and a clean certificate of service because of his long term of service.

Application for revision allowed with no order for costs. Order accordingly.



M. G. MZUNA,
JUDGE.
May 20th, 2021.