

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LABOUR DIVISION)**

**AT TANGA**

**LABOUR REVISION NO. 11 OF 2019**

(Arising from the Commission for Mediation and Arbitration at Tanga  
CMA/TAN/KOR/03/2018/01/ARB)

**BETWEEN**

**INTELLIGENCE SECURICO LTD ..... APPLICANT**

**VERSUS**

**SALIM ATHUMANI MKOMANDAA & 4 OTHERS .... RESPONDENT**

**JUDGMENT**

**MKASIMONGWA, J.**

This is an Application for Revision of the Award of the Commission for Mediation and Arbitration (CMA) at Tanga in Labour Dispute No. CMA/TAN/KOR/3/2018/01/ARB dated 12/04/2019. Before the CMA, Salim Athuman Mkomandaa, Ernest Yona Mkucha, Ayubu Abasi Abasi, Hosen Ally Bakari and Rashid Hassan, the employees of M/s Intelligence Securico Co. Ltd sued their employer claiming for a sum of Tshs 960,000/= for breach of their employment contract. The matter was so instituted on 07/02/2018.

In response to the claims, in the first place, the Respondent employer came up with a Notice of Preliminary Objection stating three points of law and sought the matter be struck out. The objection was however overruled by the Ruling of the CMA delivered on 13/07/2018. Later on 04/10/2018 at

the instance of the Respondent the claims by Ayubu Abas Abasi, Hosen Ally Bakari and Rashid Hassan were dismissed for want of prosecution. The record shows that the Respondent Employer did later on 10/04/2018 file a Notice by which she admitted to the claims brought against him by the employees. Part of the Notice reads as follows in Kiswahili.

*"KWA KUWA ... Walalamikaji wameomba kulipwa jumla ya shilingi za Kitanzania laki Tisa na Elfu Sitini (Tshs 960,000/= KWA KUWA ... wameomba kulipwa fedha hizo tajwa hapo juu kama nafuu ya matokeo ya shauri hili, na kwa kuwa, shauri hili ni la kuvunjwa kwa mkataba.*

*HIVYO BASI, mlalamikiwa tajwa hapo juu anakubali madai yao ya shilingi za Kitanzania Laki Tisa na Sitini elfu (960,000/=) kama walivyoomba.*

*KWA minajili hiyo mlalamikiwa anaomba Tume .... Isihangaike kutafuta ushahidi na badala yake tuzo itolewe kwa kuzingatia maombi haya"*

Following that admission to the claim, the CMA (Hon S. H. Warda) did on 08/11/2018 state as follows Kiswahili.

*"Shauri linakuja kwa ajili ya kusikiliza, kuanza kabisa kupokea ushahidi wa walalamikaji (2) na kumaliza ushahidi wa walalamikiwa. Tume imepokea barua tarehe 26/10/2018 kutoka kwa mlalamikiwa "Notisi ya kukubali Madai" kama yalivyowasilishwa mbele ta Tume kupitia CMA F1 Tshs. 960,000/=.*

*Ni sahihi Tume imepitia hati ya madai ya walalamikaji CMA F1 na kuona walalamikaji wanadai Tshs 960,000/= na kwa kuwa mlalamikiwa amekubali madai hayo basi Tume haina haja ya kuendelea na kesi kwa kupokea ushahidi ili kuthibitisha madai hayo kwa kuwa mlalamikiwa ameshakubali madai yake.*

**Order:** *Shauri limeahirishwa mpaka 05/12/2018 kwa ajili ya walalamikaji kulipwa madai yao kama mlalamikiwa aliyokubali."*

The record further shows that the matter was now and again adjourned and that on 12/04/2019 when the matter was placed before Hon. G. P Migire (Arbitrator), the learned Arbitrator was recorded in hand written proceedings, saying that:

**"TUME:** *Kutokana na ridhaa ya mlalamikiwa aliyowasilisha tarehe 26/10/2018, hakuna haja ya kuendelea na ushahidi. Tuzo inapitishwa kwamba mlalamikiwa awalipe walalamikaji Tshs. 960,000/= kama alivyokubali. Awalipe mara moja ndani ya siku 14 kuanzia leo, pamoja na gharama ya Tshs. 1,000,000/=*

A typed copy of the Award which was eventually served to the parties and attached to this Application however reads as follows:

*"Kutokana na ridhaa ya maandishi toka kwa wakili wa mlalamikiwa kama ilivyowasilishwa tarehe 26/10/2018, Tume haina sababu ya kuendelea kusikiliza ushahidi kwa kuwa*



*mlalamikiwa amekubali kulipa alivyodaiwa kwenye fomu CMA F1 kiasi cha Tshs 960,000/=.*

*Hivyo basi Tuzo inapitishwa kwa mlalamikiwa awalipe walalamikaji kiasi Tshs. 960,000/=.*

*Pia kwa kuwa shauri limeendelea kwa muda wa zaidi ya mwaka mmoja tangu lilipofunguliwa tarehe 06/03/2018 na kwa kuwa mlalamikiwa hajahudhuria leo, na walalamikaji wamesumbuka na kuingia gharama kuja Tanga kutoka Korogwe mara kwa mara na kuandikia hati mbali mbali na kujibu Mapingamizi ya mlalamikiwa na maelezo ya awali na orodha ya mashahidi:*

*Hivyo basi Tume inaona kwamba mlalamikiwa mefanya mzaha na atawajibika kulipa gharama ya kesi kiasi cha Tshs. 500,000/= kwa kila mmoja. Kwa watu 5 itakuwa Tshs 2,500,000/= Jumla ya deni ... Tshs. 3,460,000/= malipo yatafanyika ndani ya siku 14 zijazo."*

The Employer (Applicant in this Revision Case) is dissatisfied by the Award. She therefore challenges it by this Application for Revision on ground that:

1. The learned Arbitrator mis-conducted in awarding costs of the dispute to the Respondents.
2. The learned Arbitrator mis-conducted by awarding costs to three dismissed Respondents.

On the date the matter came for hearing before the court Mr. Abel Ottaru (Adv) appeared on behalf of the Applicants whereas the Respondents appeared in person. They all submitted in support of their respective cases. I have considered the submissions and it is my opinion that determination of this matter hinges on the following issues:

1. Whether costs are grantable in labour cases.
2. If the answer to the first question is in the affirmative whether, the CMA properly granted costs in this matter.

As regards to the first issued the general rule is that labour disputes are free of costs, interests and fees. This is clearly provided under Section 50 (6) of the Labour Institutions Act No. 7 of 2004, as amended by Section 19 (b) of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2010, Rule 51 of the Labour Court Rules (GN. No. 106 of 2007) and Section 88 (9) of the Employment and Labour Relations Act No. 6 of 2004. The exception to the general rule is as it was enunciated in the case of Tanzania a Breweries Ltd v. Nancy Maronie: Labour Dispute No. 182 of 2015 (Unreported) where it was held that:

*"Whether the dispute or application is before the commission for mediation and Arbitration or in the High Court of Tanzania*

*Costs is awarded only where there is an existence of frivolous and/or vexatious proceedings."*

On the basis of the above authority it is evident that in Labour Cases the CMA and/or the High Court of Tanzania may award costs in a labour matters despite the general rule which is to the contrary.

As to whether it was proper when the CMA was dealing with the matter at hand to award costs, in the first place it is clear from the records that in the matter there are two orders for payment of costs. The first one was that mentioning the sum as being Tshs. 1,000,000/= and the second one was that for payment of Tshs. 2,500,000/=. In the premise, the order is not executable. Secondly; since prior to the admission the Applicants other than those now appearing as Respondents had been disqualified from having audience as a result of their failure to enter appearances before the CMA, it was not proper when the CMA awarded them with costs. Thirdly; indeed, in the matter before the CMA the Respondents had unsuccessfully raised a preliminary objection and that her admission to the claim came at the earliest stage after determination of the Preliminary Objection. This fact together with the fact that the Applicant had admitted liability exonerate her from the conduct one can associate it with frivolous and vexatious conducts. Fourthly; Since the Respondents in the matter



before the CMA had admitted to the claim on 26/10/2018 and was first recorded by the CMA 08/11/2018, it was not necessary for the CMA to adjourn the matter and requiring the attendance of the parties. Suffice it to say here that the CMA ought to have granted the Award on admission and leave the matter for execution which was a later action to be taken by the successful parties.

All in all, I am not persuaded to find justification in the award of costs in this matter. As such the order for payment of costs is revised. The same is accordingly set aside.

Dated at Tanga this, 6<sup>th</sup> day of September, 2021.



  
E. J. Mkasimongwa

**JUDGE**

**06/09/2021**