

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

AT MUSOMA

LABOUR REVISION NO. 7 OF 2021

GRUMETI RESERVES LIMITED APPLICANT

VERSUS

EMMANUEL SAMWEL NYANTITO RESPONDENT

(Revision from the award of the Commission for Mediation and Arbitration for Musoma (Hon. Massawe, Y. -Arbitrator) dated 4th January, 2021 in Labour Dispute Number CMA/MUS/16/2020)

JUDGEMENT

23rd and 23rd November, 2021

KISANYA, J.:

Grumeti Reserves Limited has moved this Court to be pleased to call for records, revise and set aside the award of the Commission for Mediation and Arbitration (CMA) for Musoma in Labour Dispute No. CMA/MUS/16/2020 that was delivered on 4th January, 2021. The application is brought by way of a notice of application and chamber summons. It is supported by an affidavit deposed on 3rd February, 2021, by Amosi Charles Nyambuche, human resource officer of the applicant.

The brief background facts of this matter is that: On 1st January, 2013, the applicant employed the respondent, Emmanuel Samwel Nyantito in the position of a house-keeper. On 6th November, 2019, the respondent was assigned to transfer the applicant's guest from one tent to another whereby,

USD 900 disappeared. It was alleged that, at the time of transferring the said guest, the respondent failed to involve a security guard thereby, contravening the applicant's procedure and regulations. Therefore, the respondent was charged with the offence of gross dishonest. He was found guilty of that offence and was terminated from employment with effect from 19th December, 2019.

Aggrieved, the respondent referred the matter to the CMA. He prayed for compensation for unfair termination. In bid to prove that the respondent's termination from employment was fair, the applicant called three witnesses namely, **Masalu Sai Kirogi (DW1)**, **Deo Nyinyimbe (DW2)** and **Amsi Charles Nyambuche (DW3)**. Their oral testimonies was supported by three exhibits. On his part, the respondent called no witness to support his evidence. He also tendered one exhibit to wit, the contract of employment.

Upon considering the evidence adduced by both sides, the CMA was satisfied that the offence levelled against the respondent was not duly proved. Therefore, it was the CMA's decision that the termination was unlawful as the reason for termination was not fair. The applicant was then ordered to pay the respondent compensation of 12 months' salary (Tshs. 6,120,000), payment in lieu of notice (Tshs. 510,000) and severance pay.

Dissatisfied with that decision, the applicant has lodged the present application for revision. The ground registered in the supporting affidavit reads:-

- 1. That the Arbitrator erred in law and fact by holding that there was no evidence to prove that in the applicant place there is procedure for house keeper to be accompanied by security guard when transferring the guest from one tent to another while this fact was not disputed.*
- 2. That the Arbitrator erred in law and fact by failing to evaluate evidence adduced by applicant who proved the fairness of respondent's termination on the balance of probabilities which is the standard required under the law as the result end up with erroneous decision."*

This matter proceeded in the absence of the respondent who failed to appear without notice. The applicant was represented by Mr. Godfrey Ngassa, learned advocate who submitted in support of the application. As I was composing the judgment, I noticed that the Arbitrator did not insert his signature after recording the evidence adduced by the witnesses called by the applicant and respondent. Since this matter goes to the root of the case, I found it apposite to recall the parties to address the Court on the propriety, legality or correctness of the proceedings of the CMA.

Responding to this issue, Godfrey Tesha, learned advocate for the applicant contended that the applicant was not served with the copy of the proceedings. He was of the view that the Arbitrator did not append his signature after recording the evidence, the proceedings of the CMA are defective. He therefore, implored me to nullify them, quash and set aside the award arising thereto and order for rehearing of the labour dispute before another Arbitrator.

As earlier on stated, it is on record that the Arbitrator did not append his signature after recording the oral evidence adduced on oath by the witnesses called by both parties. The law is settled that the omission to insert the signature after recording the evidence raises doubt on the authenticity of evidence adduced by the respective witness. See for instance the case of **Uniliver Tea Tanzania Limited vs Davis Paul Chaula**, Civil Appeal No. 290 of 2019 (tanzlii) where the Court of Appeal held as follows:-

*“Without the signature of the Arbitrator, the authenticity of evidence of the witnesses would obviously be put to doubt and for that reason, be invalid. - See the case of **Iringa International School** (supra). In that case in which, like in the case at hand, the Arbitrator did not insert her signature in the proceedings after recording the evidence of each of the witnesses, the Court took*

inspiration from inter alia, O.XVIII r. 5 of the Civil Procedure Code [Cap. 33 R.E. 2019]...

Upon consideration that the purpose of signing the proceedings is to authenticate them, the Court held that the omission vitiated the proceedings of the CMA. "

That being the position, I find that the proceedings of the CMA were vitiated due to the Arbitrator's failure to insert his signature after recording the evidence of all witnesses. It follows that, the award issued by the CMA is a nullity because it arose from the vitiated proceedings. From the foregoing discussion, I find it not necessary to consider the grounds for revision because they are premised on the vitiated proceedings and award.

In the circumstances, I am inclined to quash the said proceedings of the CMA and set aside the award made thereon. On the way forward, I order that the case file be remitted to the CMA for hearing of the labour dispute de novo before another Arbitrator. I make no order as to costs due to the circumstances of this case. It is so ordered.

DATED at MUSOMA this 23rd day of November, 2021.


E. S. Kisanya
JUDGE

Court: Judgment delivered this 23rd day of November, 2021 in the presence of Mr. Godfrey Tesha, learned advocate for the applicant and in the absence of the respondent.



A handwritten signature in blue ink, appearing to read "E. S. Kisanya".

E. S. Kisanya
JUDGE
23/11/2021