

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

IN THE DISTRICT REGISTRY OF MOSHI

AT MOSHI

LABOUR REVISION NO. 18 OF 2021

(Originating from an Award of the Commission for Mediation and Arbitration at Moshi – Kilimanjaro (Hon. G.P. Migire, Arb.).

YARA TANZANIA LIMITED APPLICANT

VERSUS

IDD ABEID NAIBU RESPONDENT

JUDGEMENT

10 & 10/11/2021

MWENEMPAZI, J

The applicant has filed this application under the provisions of section 91(1), 9a), 9b), 91(2) (a), 91(2), (a), (b), (c), and 91 (1) (b) (i) of the Employment and Labour Relations Act, Cap 366 RE 2019, Rules 24(1),(2) (a), (b) (c), (d), and (f) and 24(3) (a) (b) (c) and (d), Rules 28(1), 28(1), 28(1) (c), (d) and € of the Labour court Rules, G.N. No. 106 of 2007. The applicant is praying for an order of the court calling for record of proceedings of the commission for mediation and arbitration at Moshi – Kilimanjaro in Labour Dispute No. CMA/KLM/MOS/ARB/99/2020 decided on 30th April, 2021 revise the same, quash the proceedings and set aside an award and make such orders as it deems fit and just.

The application is supported by the affidavits of Narindwa Shaidi and Geoffrey Geay Paul, in the affidavit of Narindwa Shaidi, at paragraph 22 the applicant has listed grounds of application. The same are also listed in the affidavit deposed by Geoffrey Geay Paul at paragraph 33. As would be expected, the respondent, one Idd Abeid Naibu is vigorously opposing the application. He has filed counter affidavit.

When the matter came for hearing, the applicant was being represented by Mr. Reuben Robert, Advocate and the respondent was being represented by Ms. Jane James learned advocate who was holding brief for Ms. Zuhura Twalib Advocate with instruction to proceed with hearing.

Mr. Reuben Roberts Advocate submitted that he has been reviewing the record in preparation for hearing and going through the CMA proceedings in particular testimony of PW1, Idd Naibu Abeid which features from page 33-36 of the proceedings at page 36 where the testimony ends the trial arbitrator has not appended his signature at the end of PW'S testimony. This is contrary to the law as recently interpreted by the court of Appeal of Tanzania in several decisions. He referred this court to the Court of Appeal of Tanzania decision, Civil Appeal No. 155 of 2019, ***Iringa International School Vs. Elizabeth Post***, a decision delivered on 20th September, 2021 at Iringa Registry. At page 6 last paragraph the Court observed that the evidence of each witness needs to be signed by the arbitrator. The court of appeal drew an inspiration from Civil Procedure Code, Cap. 33 R.E.2019 Order XVII Rule 5 and S. 210(1) of CPA, Cap 20 RE 2019. In the end the court of appeal of Tanzania at page 8 held that the ***omission to append a signature at the end of the testimony of the witnesses vitiated the***

proceedings of the CMA. The Court of Appeal of Tanzania proceeded to quash both the proceedings and decision at the High Court and the proceedings and award of CMA.

The same decision was held in ***Unilever Tea Tanzania LTD Vs. Davis Paulo Chaula***, Civil Appeal No. 290 of 2019, CAT at Iringa also September, 2021 decision. The unilever decision the court of appeal reiterated the decision in ***Iringa International School case (Supra)***. Refer at page 7 last paragraph. At the end the decision and proceedings at the CMA and decision and proceedings at the High Court were quashed.

The testimony of Idd Abeid have been relied heavily in the decision of the CMA in an award. In the circumstances, the counsel prayed that this court follow the decisions cited and proceed to quash the proceedings of CMA and its resultant award. Since the effect is to order the matter to be heard de novo, the counsel prayed that this court to follow the same trail as in the cited cases herein the submission.

On her part, on behalf of the Respondent, Ms. Jane James, learned Advocate, submitted that she has gone through the arbitration proceedings and confirmed that the testimony of the respondent was not appended an arbitrator's signature at the end. The decisions cited are straight forward and have given the direction to be taken; to quash and set aside the proceedings and award and the record be remitted to the CMA for hearing de novo by another arbitrator. The counsel prayed this court to abide by the decisions of Court of Appeal of Tanzania which have been cited. The counsel also prayed that the case be heard as soon as possible because the

respondent has been out of job and the applicant refused to take him back (repatriate) him back to Mbeya, he is here in Moshi with his family.

I have as well read the record; I hereby agree to the submissions by the counsels. The Arbitrator has appended his signature in some of the witnesses' testimonies and in testimonies some witnesses, including that of Iddi Naibu Abeid, the Arbitrator has not appended his signature as shown at page 36 of the typed proceedings. In the decision cited the Court of Appeal of Tanzania in arriving at the position in the case of ***Iringa International School Vs Elizabeth Post(supra)*** cited the case of *Yohana Mussa Makubi and Another vs Republic, Criminal Appeal No. 556 of 2015*, where the court held among other things:

*"...in the absence of the signature of the trial [Judge] at the end of the testimony of every witness; **firstly**, it is impossible to authenticate who took down such evidence, **secondly**, if the maker is unknown then, the authenticity of such evidence is put to questions as raised by the appellants Counsel, **thirdly**, if the authenticity is questionable, the genuineness of such proceedings is not established and thus; fourthly, such evidence does not constitute part of the record of trial and record before us."*

The testimony of the said Iddi Naibu ABEid is thus put into question in regard to its authenticity as submitted, relying on the principles and holding of the cited cases. As clearly submitted by the counsels for both parties in reliance to the cited authorities, the omission vitiates the proceedings and the resulting award. The proceedings have to be quashed and set aside as prayed and an order for hearing de novo be issues. I therefore do hereby

find and order that the proceedings of the CMA and award are quashed and set aside **respectively** and that the record is hereby ordered to be returned to the CMA for hearing *de novo* before another arbitrator. It is ordered accordingly.

Dated and delivered at Moshi on the 10th day of November, 2021



A handwritten signature in blue ink, appearing to read 'T. Mwenempazi'.

T. MWENEMPAZI

JUDGE

Judgement is delivered this 10th day of November, 2021 in the presence of Mr. Reuben Robert, learned advocate for the applicant and Ms. Jane James, Advocate holding brief for Ms. Zuhura Twaib, Advocate for the Respondent.



A handwritten signature in blue ink, appearing to read 'T. Mwenempazi'.

T. MWENEMPAZI

JUDGE