

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

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LABOUR REVISION No. 5 OF 2020

*(Arising from the Commission for Mediation and Arbitration for Tanga at Tanga in
Labour Dispute No. CMA/TAN/106/2018)*

RATCO COMPANY LIMITED ----- APPLICANT

Versus

SAID SALIM SAID ----- RESPONDENT

RULING

03.12.2021 & 03.12.2021

F.H. Mtulya, J.:

On the 24th day of September this year, 2021, the full court of Court of Appeal in the precedent of **Joseph Elisha v. Tanzania Postal Bank**, Civil Appeal No. 157 of 2019, filled a *lacunae* found in labour laws, rules and regulations with regard to appending of signature after completion of each witness statement in labour proceedings conducted in the Commission for Mediation and Arbitration (the Commission) by inviting the provisions in Rule 5 of Order XVIII of the **Civil Procedure Code** [Cap. 33 R.E 2019] (the Code).

The precedent was invited today in this court by Mr. Peter Bana, learned counsel for the **RATCO Company Limited** (the applicant) during the hearing of the labour revision emanated from the decision of the Commission based in Tanga in **Labour Dispute No. CMA/TAN/106/2018** (the dispute). According to Mr. Bana the arbitrator, in the proceeding of the dispute in the Commission, did not append signature after each witness statement hence such failure is fatal and renders the proceedings a nullity. With remedies available in such circumstances, Mr. Bana submitted that the directives of the Court of Appeal is to remit the dispute in Commission to be tried *de novo* by another arbitrator.

The submission was received well by another officer of this court Mr. Hussein Hitu, learned counsel for Mr. Said Salim Said (the respondent), who conceded the point and briefly submitted that he has no reason to dispute the precedent of the full court of the Court of Appeal in absence of a decision of full bench of the same court. According to Mr. Hitu, he is aware that Rule 27 (1) of the **Labour Institutions (Mediation and Arbitration Guidelines) Rules**, GN. No. 67 of 2007 (the Rules) which require arbitrator's signature in an award, but unaware of the new directives of the Court of Appeal in the precedent of **Joseph Elisha v. Tanzania Postal Bank** (supra). To

his opinion, Mr. Hitu submitted that the precedent came to cure the gap and must be celebrated by officers of this court.

I have perused the record of the dispute in the Commission and precedent of the Court of Appeal in of **Joseph Elisha v. Tanzania Postal Bank** (supra). The proceedings in the dispute shows that witness statements of each witness were not signed by the arbitrator at the end of testimonies to authenticate the evidences. In the precedent of **Joseph Elisha v. Tanzania Postal Bank** (supra), the Court of Appeal invited and perused three (3) decisions of its own in **Mhajiri Uladi & Another v. Republic**, Criminal Appeal No. 234 of 2020; **Chacha Ghati @ Magige v. Republic**, Criminal Appeal No. 406 of 2017; and **Iringa International School v. Elizabeth Post**, Civil Appeal No. 2019; and enactment in section 210 (1) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act) and Rule 5 of Oder XVIII of the Code, and finally at page 8 of the judgment, the Court held that:

In the event, the failure by the arbitrator to append signature at the end of each witness's testimony vitiated the proceedings before the CMA...we proceed to quash the proceedings of the CMA and set aside the award as well as the proceedings and judgment of the High Court

*which upheld that award. For justice to be done, we remit the record to the CMA for the dispute to be heard **de novo** before another arbitrator.*

The reasoning of the Court in arriving that decision is displayed at the same page in the following words:

As demonstrated in this appeal, the testimonies of all witnesses were not signed...not only the authenticity of the testimonies of the witnesses but also the veracity of the trial court record itself is questionable. In absence of signature of the person who record the evidence, it cannot be said with certainty that what is contained in the record is the true account of the evidence of the witness since the recorder of such evidence is unknown...on account of such omission, the entire proceedings recorded...are vitiated because they are not authentic.

Having precedent of our superior court on the subject, this court, as inferior court in judicial hierarchy, has to follow the course for the need of certainty of decisions emanating from our courts and respect to our final court of appeal. I have therefore decided to quash the decision and set aside the entire proceedings, award and

any orders emanated in the Commission on the dispute. For interest of justice, I remit the record to the Commission for the dispute to be heard *de novo* before another arbitrator within a period of three (3) months without any further delay. I make no any order as to costs, as the matter arose from labour dispute, and no any fault was occasioned by the parties and in any case, learned counsels in this revision acted as officers of this court.

Ordered accordingly.




F. H. Mtulya

Judge

03.12.2021

This Ruling is delivered in Chambers under the seal of this court in the presence of the respondent, Mr. Said Salim Said and his learned counsel Mr. Hussein Hitu and in the presence of the learned counsel Mr. Peter Bana for the applicant.




F. H. Mtulya

Judge

03.12.2021