

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF ARUSHA**  
**AT ARUSHA**  
**REVISION APPLICATION NO. 12 OF 2020**

**(Originating from Labour Dispute No. CMA/ARS ARS/MISC. APPL/30/19)**

**JANNERE BEEMSTER.....APPLICANT**

**VERSUS**

**TARASILA PETRO SHAMBA.....RESPONDENT**

**JUDGMENT**

**13/06/2022 & 25/07/2022**

**GWAE, J**

This revision application has been referred in this court by the applicant, Jannere Beemster who is seeking revision of the Commission for Mediation and Arbitration (CMA) award which was delivered in favour of the respondent on 7<sup>th</sup> Feb. 2020.

Inopportunately, the original file from CMA was not appended in the records of this revision, however a little can be grasped from the award that is attached in the application. From the award, it can be gleaned that this dispute arose out of the following context; the respondent was

employed by the applicant for domestic works, as a babysitter. The respondent was terminated on 7<sup>th</sup> September 2018 where she was called and informed that she should not come to work again and was accused for causing loss of applicant's money. The respondent insisted to discuss the matter with the applicant but she refused.

Aggrieved, the respondent filed a complaint at CMA complaining for unfair termination. Hearing at CMA proceeded ex parte, in the absence of the applicant. In the ex-parte award, it was ordered that the respondent was unfairly terminated in terms of both substantive and procedural aspect. The respondent was therefore awarded twelve months' salary compensation and other terminal benefits, making a total sum of Tshs. 4,603,846/=.

The applicant being served with the ex-parte award, decided to file an application for setting it aside. The application was dismissed for want of merit as the Commission found that there was no good reason advanced by the applicant.

Dissatisfied by this decision, the applicant has filed this application for revision, which has been accompanied by an affidavit of the applicant's counsel namely; Mr. George Njooka. It is in the applicant's affidavit where the legal issues complained, these are stated as follows;

1. That, the arbitrator erred in law and in fact by delivering the ruling without hearing the parties.
2. That, the arbitrator erred in law and in fact by ordering the parties to file closing submission in an application.
3. That, the arbitrator erred in law and in fact by entertaining an application without the latter (sic) for legal representation from the applicant.
4. That, the arbitrator erred in law and in fact by failure to properly assess and evaluate the reasons advanced in the affidavit by the applicant.
5. That, the arbitrator ruling has occasioned a miscarriage of justice to the applicant.

The application was strongly opposed by the respondent through her counter affidavit where she maintained that the applicant filed her affidavit through the affidavit sworn by one AMANI KISINZA and the same was supported by the written submission of the applicant. According to her opinion, the applicant cannot be justified to complain that she was not given the right to be heard.

When the matter was called on for hearing, the applicant was represented by Mr. George S. Njooka learned counsel, the respondent on the other hand was represented by Mr. Frank Maganga, the respondent's own choice representative.

With leave of this court the application was disposed of by way of written submissions. However, as I was going through the parties' submissions, I noted that the respondent's written submission against the applicant's application was filed out of time. In the scheduling order, the respondent was ordered to file her reply on or before 23/05/2022 but the same appears to be filed on 30/05/2022 without leave of this court to file it out of time.

Under these circumstances, the submission having been filed out of time without leave of this court is as good as the same has not been filed and this court therefore discard from consideration. The applicant's submission will be considered as I determine the application.

With regard to the first and second complaints, the applicant submitted that, the arbitrator arrived at his decision without availing the parties with the right to be heard. Moreover, the counsel submitted that the CMA file does not contain any record showing that the hearing was conducted. He went on stating that there is no any proceeding showing orders, dates and presence of the parties. It was the counsel's observation that, by failure to conduct hearing the arbitrator violated the provisions of rule 29 (9) of the Labour Institutions (Mediation and Arbitration) Rules,

2007 which requires the Commission to allocate date for hearing of the application.

Determining these two complaints, this court revisited the records of the CMA in Misc. Application No. 30 of 2019. Strangely, it is to the surprise of this court that the CMA file does not contain any arbitration proceedings except for photocopies of the applicant's closing statement, reply to the respondent's counter affidavit, applicant's affidavit and the CMA ruling. It should be noted that it is the court's records or those of the Commission which present what transpired in Court /Commission. In this case it is unfortunate that, this court has nothing to make reference to with regard to what transpired at the CMA vide Misc. Application No. 30 of 2019.

The applicant herein is aggrieved by the decision of the CMA in the above cited application, where the Commission refused to set aside the ex parte award on reasons that the applicant did not give sufficient reasons. If this court is moved not to revise the proceedings of the CMA in the said application, then where will be no record to make reference by the Court of Appeal as to what transpired in the Commission in order to arrive to a just decision?

Our courts recognise the presumption of sanctity of the court records. The Court of Appeal in the case of **Halfani Sudi v. Abieza Chichili** [1998] TLR 527, at 529 observed as follows;

*"We entirely agree with our learned brother; MNZAVAS, J.A. and the authorities he relied on which are loud and clear that "A court record is a serious document. It should not be lightly impeached": **Shabir F.A. Jessa v. Rajkumar Deogra**, [CAT- Civil Reference No. 12 of 1994 (unreported)] and that "There is always the presumption that a court record accurately represents what happened": **Paulo Osinya v. R.** [1959} EA . . . 353]....."*

Guided by the above principle, I am therefore of the considered view in the absence of proper and accurate record from the Commission nothing can be conveniently including determination of issues complained by the applicant.

Consequently, the Commission is hereby ordered to expeditiously re-hear of the applicant's Misc. Application No. 30 of 2019 and ensure that the proceedings are properly recorded. This being a labour case, no order as to costs is issued.

It is so ordered.

Dated and delivered at Arusha this 1<sup>st</sup> August 2022

  
**M. R. GWAE**  
**JUDGE**  
**01/08/2022**

